IN THE

Supreme Court of the United States

October Term, 1976

No. .....

~~76~~-1112

RALPH WILLIAMS' NORTHWEST CHRYSLER PLYMOUTH, INC.; RALPH WILLIAMS, INC. AND RALPH WILLIAMS,

Appellants,

vs.

STATE OF WASHINGTON,

Appellee.

Appeal From the Supreme Court of the State of Washington.

JURISDICTIONAL STATEMENT.

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JURISDICTIONAL STATEMENT.

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, Appellants Ralph Williams' Northwest Chrysler Plymouth, Inc., Ralph Williams, Inc. and Ralph Williams file this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the Judgment and Orders in question, and that the Court should exercise such jurisdiction in this case.

Opinions Below.

The opinions of the Supreme Court of the State of Washington which are the subject of this matter are *State of Washington v. Ralph Williams, et al.*, 87 Wn.2d 298, ... P.2d .... (1976) and *State of*

Washington v. Ralph Williams, et al., 87 Wn.2d 327, ... P.2d .... (1976). The opinions are set forth herein as Appendices A and B, respectively.

The initial remand of the subject litigation from the Supreme Court of Washington to a subsequent trial resulting in the opinions stated in Appendices A and B, is set forth in *State of Washington v. Ralph Williams, et al.*, 82 Wn.2d 265, 510 P.2d 233 (1973).

Grounds of Jurisdiction of Supreme Court.

This appeal arises from an action brought by the Appellee in October, 1970, in the Superior Court of King County, State of Washington, alleging violations by appellants of Chapter 216 of the laws of the State of Washington of 1961, as amended by Chapter 26 of the laws of the State of Washington of 1970, first extraordinary session, codified as Revised Code of Washington Chapter 19.86, which provides in the portions pertinent hereto as follows:

"19.86.020 Unfair competition, practices, declared unlawful.

"Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

"19.86.080 Attorney General may restrain prohibited acts-Costs-Restoration of property.

"The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

"The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful.

"19.86.140 Civil Penalties.

"Every person who shall violate RCW 19.86.030 or 19.86.040 or the terms of any injunction issued as in this chapter provided, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

"Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation: Provided, That nothing in this paragraph shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, advertising in good faith without knowledge of its false, deceptive or misleading character.

"For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

"With respect to violations of RCW 19.86.030 and 19.86.040, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action."

In March, 1971, appellee filed an amended complaint alleging violations of RCW 19.86.020 by appellants and prayed that the court assess a civil penalty of $2000.00 under RCW 19.86.140 for each purported violation and that appellee further recover costs and attorney's fees under RCW 19.86.080.

On May 17, 1973, the Supreme Court of the State of Washington rendered its decision (82 Wn.2d 265, 510 P.2d 233) reversing the trial court's judgment of dismissal for appellants herein, held that the "Consumer Protection Act" was constitutional and remanded the case for trial.

After remand by the Washington Supreme Court, the cause proceeded to trial in the Superior Court, and judgment was entered therein on or about December 9, 1974, in favor of appellee and against appellants in said state court proceeding. A copy of said Judgment and Decree is set forth herein as Appendix C. Concurrently with the entry of said Judgment and Decree and as a part thereof, the Superior Court issued its Order Concerning Restitution on December 9, 1974. A copy of said Order Concerning Restitution is set forth herein as Appendix D.

With respect to Appendices C and D, the Superior Court, after entry of said Judgment and Order issued an Order to Show Cause why appellants should not be held in contempt, and issued its Order on March 21, 1975, holding appellants in contempt of the Judgment and Order and on April 7, 1975, entered its

Order Imposing Sanctions; and imposed sanctions against appellants herein. Appellants appealed the Judgment and Decree and Order of Restitution as well as the Order Finding Defendants in Contempt (Appendix E), and Order Imposing Sanctions for Contempt (Appendix F). Subsequently the Washington State Supreme Court rendered its opinion (Appendix A) as to the Judgment and Decree and Order of Restitution and its Opinion (Appendix B) as to the Contempt Orders (Appendices E and F).

The Opinions of the Washington Supreme Court (Appendices A and B) were rendered on July 22, 1976, Petitions for Rehearing were filed and denied and the Judgment and Decree and Order of Restitution became the final judgment for the purpose of appeal on October 5, 1976. The Contempt Orders became the final judgment for the purpose of appeal on October 4, 1976.

A timely notice of appeal was filed on December 17, 1976, in the Superior Court of King County, State of Washington by appellants and a copy thereof is annexed hereto as Appendix G.

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C., § 1257(2). Cases that sustain the jurisdiction of the Court include: *Robinson v. State of Fla.*, (Fla. 1964), 84 S.Ct. 1693, 378 U.S. 153, 12 L.Ed.2d 771. *Mercantile Nat. Bank at Dallas v. Langdeau*, (Tex. 1963), 83 S.Ct. 520, 371 U.S. 555, 9 L.Ed.2d 523. *Central R. Co. of Pa. v. Com. of*

Pa., (Pa. 1962), 82 S.Ct. 1297, 370 U.S. 607, 8 L.Ed.2d 720. *Marcus v. Search Warrants of Property, etc.*, (Mo. 1961), 81 S.Ct. 1708, 367 U.S. 717, 6 L.Ed.2d 1127.

Questions Presented.

Whether the Consumer Protection Act and those sections thereof which appellee herein pursued against appellants, are unconstitutional on their face and as applied, in violation of appellants' right of free speech under the First Amendment of the United States Constitution, appellants' right to be free from the imposition of excessive fines and cruel and unusual punishment under the Eighth Amendment of the United States Constitution and appellants' rights to privileges and immunities, right to equal protection of the laws and right to due process of law under the Fourteenth Amendment of the United States Constitution, in that:

A. Revised Code of Washington 19.86.020 infringes on appellants' right to free speech by failing to establish an ascertainable standard for words, acts or conduct prior to the imposition of penalties therefor and, thus, throttles the words, acts and conduct of appellants which are protected by the First and Fourteenth Amendments to the Constitution of the United States.

B. The Consumer Protection Act imposes penalties that are unrelated to any prohibited activity, which penalties are of a criminal and penal nature, and the Consumer Protection Act fails to provide for trial by jury and trial by jury is not available for those alleged criminal acts, which right to trial by jury is protected by the Sixth and Fourteenth Amendments to the United States Constitution.

C. Revised Code of Washington 19.86.140 requires appellants herein to pay and forfeit a fine of not more than $2,000.00 for each violation of RCW 19.-86.020, even though the cumulative words, acts and conduct have innocently taken place without prior administrative or judicial restraint, such that fines, which may accrue in the millions of dollars, are excessive and amount to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

D. Revised Code of Washington 19.86.020 is unduly vague and uncertain and infringes on appellants' right to procedural and substantive due process of law under the Fifth and Fourteenth Amendments to the United States Constitution in that:

(1) RCW 19.86.020 fails to give fair and adequate notice of what words, acts or conduct are prohibited by the statute, establishes a vague and unascertainable standard for words, acts and conduct, and amounts to a delegation of the lawmaking power from the legislature to the courts.

(2) RCW 19.86.020 and RCW 19.86.140 penalize all words, acts or conduct when such are unjust and unreasonable in the arbitrary estimation of the trier of fact.

(3) RCW 19.86.020 fails to provide for any prior decision by any administrative agency or court as to the unfairness of the words, acts or conduct prior to the imposition of fines and penalties.

Whether or not under the Judgment and Decree and Order of Restitution appellants can be held in contempt for non-payment of a money judgment and

subjected to bench warrants for arrest and continuing fines of $200.00 per day per appellant when:

A. Personal service was not effected on appellants;

B. No determination was made as to appellants' ability to comply with the Orders and Judgments; and

C. The trial court exceeded its power and authority whether statutorily or by "inherent power."

The Supreme Court of the State of Washington, in *State of Washington v. Ralph Williams' Northwest Chrysler Plymouth, Inc., et al.*, 82 Wn.2d 265, 510 P.2d 233 (May 1973), in remanding the case against appellants for trial, construed the constitutionality of the Consumer Protection Act (RCW 19.86 *et seq.*), commencing at page 278:

> "Respondents argue the Consumer Protection Act as it is now drafted is unconstitutional as being void for vagueness. The respondents' specific contention is that the terms of RCW 19.86.020 and .920 are vague and the act provides no clarifying standards. The terms deemed vague and standardless are 'unfair methods of competition', 'unfair or deceptive acts or practices', 'reasonable in relation to the development and preservation of business', and 'not injurious to the public interest'.
>
> "This argument is premised on the assertion that RCW 19.86 is a penal statute and thereby must be strictly construed. The existence of penalties in an act, however, does not make the act quasi-criminal in nature. The legislature has wide discretion in the choice of remedies to promote compliance with a law, and providing for fines in a civil proceeding does not convert the

> proceeding to a criminal or penal one. *Helvering v. Mitchell,* 303 U.S. 391, 82 L.Ed. 917, 58 S.Ct. 630 (1938); *Olshausen v. Commissioner,* 273 F.2d 23 (9th Cir. 1959), *cert denied,* 363 U.S. 820, 4 L.Ed.2d 1517, 80 S.Ct. 1256 (1960); *Kugler v. Romain,* 110 N.J. Super. 470, 266 A.2d 144, 153 (1970), *aff'd as modified,* 58 N.J. 522, 279 A.2d 640 (1971). Therefore, construction of RCW 19.86 is not governed by the strict rules pertaining to penal statutes.
>
> "The charge of vagueness is specifically answered by *State v. Reader's Digest Ass'n,* 81 Wn. 2d 259, 501 P.2d 290 (1971) where this court noted that although the due process clause of the Fourteenth Amendment requires that people be given notice of what is statutorily prohibited in the regulation of business activities, greater leeway is allowed in applying the vagueness test in this field. We there noted, at page 274, 'The federal courts have amassed an abundance of law giving shape and definition to the words and phrases challenged . . .' Now, more than 30 years after the Supreme Court said that the phrase 'unfair methods of competition' does not admit to 'precise definition', we can say that phrase, and the amended language, has the meaning well settled in federal trade regulation law. Thus, in interpreting the language of RCW 19.86.020 with the guidance of federal law (RCW 19.86.920), we hold that the phrases 'unfair methods of competition' and 'unfair or deceptive acts or practices' have a sufficiently well established meaning in common law and federal trade law to meet any constitutional challenge of vagueness.

"Unlike First Amendment cases, the court is not concerned with the vagueness of the statute on its face but rather whether the statutory language, tested in light of the conduct with which the defendant is charged, is vague. *United States v. National Dairy Prods. Corp.*, 372 U.S. 29, 9 L.Ed.2d 561, 83 S.Ct. 594 (1963).

"Finally, the respondents assert the procedural differences between the Federal Trade Commission Act and the Washington Consumer Protection Act indicates a constitutional deficiency in the state act. We disagree. Under the Federal Trade Commission Act, penalties may only ensue upon cease and desist order violations, whereas our act's penalty attachment occurs if there is a judicial decree of unlawful practices. However, since the terms of the act are sufficiently precise to give notice of what is prohibited and since our procedures require a judicial finding before any penalties may attach, the differences in the federal and state processes are insignificant."

The Supreme Court of the State of Washington has, therefore, held that RCW 19.86 is not unconstitutional either on its face or as applied to appellants herein. In addition, the Washington State Supreme Court in its Opinion in 87 Wn.2d 327 (Appendix B) has affirmed that appellants can and shall be held in contempt for the non-payment of the sums of money set forth hereinabove in the manner and under the conditions ordered.

Statement of the Case.

Appellants asserted the unconstitutionality of the subject statute at the inception of the litigation and the Washington State Supreme Court upheld its constitutionality as set forth hereinabove in 82 Wn.2d 265, 510 P.2d 233 and remanded the case for trial. During the trial of the case, appellants attacked the constitutionality of the statute both on its face and as applied to appellants. The penalties imposed against appellants were:

1. Without relation to reliance by anyone on purported wrongful conduct.

2. Without relation to purported conduct by appellants.

3. Without the utilization of any tangible standard for the determination of any purported wrongful conduct.

The Washington State Supreme Court in its Opinion following the trial at 87 Wn.2d 298, *supra*, (Appendix A, p. 9) stated in response thereto that:

"Appellants attack the imposition of civil penalties, because the trial court did not find that the consumers relied on appellants' wrongful conduct. A claimant need not prove consumer reliance to establish an unfair or deceptive practice. A claimant must prove that the conduct has the capacity or tendency to deceive. *Vacu-Matic Carburetor Co. v. Federal Trade Comm'n*, 157 F.2d 711 (7th Cir. 1946), *cert. denied*, 331 U.S. 806, 91 L.Ed. 1827, 67 S.Ct. 1188 (1947); *see* Comment, *Toward Effective Consumer Law Enforcement: The Capacity to Deceive Test Applied to Private Actions*, 10 Gonzaga L. Rev. 457 (1975)."

Appellants further contended to the Washington State Supreme Court that the subject statute both on its face and as applied was in violation of Amendments I, V, VI, VIII and XIV to the United States Constitution. The State Supreme Court in 87 Wn.2d 298, *supra,* (Appendix A, p. 12) referred to the application of the statute and to its decision in the initial appeal, 82 Wn.2d 265, *supra,* and affirmed its holding of constitutionality.

Following the filing of appellants' briefs with the Washington State Supreme Court and prior to the decisions in *State of Washington v. Williams,* (Appendices A and B) 87 Wn.2d 298 and 87 Wn.2d 327, respectively, the State Supreme Court rendered two decisions that should be noted with relation to the Consumer Protection Act. In *Johnston v. Beneficial Management,* 85 Wn.2d 637, 538 P.2d 510 (1975), the court at 85 Wn.2d 642, 644 stated:

"This court has said that although the statute imposes civil penalties, it is not subject to the strict construction which is ordinarily required where a statute imposing criminal penalties is involved. *State v. Ralph Williams' Northwest Chrysler Plymouth, Inc.,* 82 Wn.2d 265, 510 P.2d 233 (1973). In that case it was contended that the statute was unconstitutional because the phrase 'unfair or deceptive acts or practices,' as well as other terms used in RCW 19.86.020 and .090, was too vague to meet the requirements of due process. *While recognizing that the statute itself does not define the scope of this phrase or provide standards for determining whether particular conduct is prohibited, we held that the words have acquired a well-settled meaning in federal trade*

regulation law, under federal court decisions, to which reference is made in the act for guidance in determining its meaning. RCW 19.86.920.

"Turning to the cases decided under the act, as digested in 15 U.S.C.A. § 45, nn. 64-90, and f.c.a. 15 § 45, §§ 23-29, we find that 'unfair or deceptive acts or practices,' under the Federal Trade Commission Act, 15 U.S.C. § 45, fall into the following general categories: deceptive or false advertisements, including deceptive pictorial representation in advertisements; selling by means of punchboard or lottery; misrepresentations, including misrepresentations regarding price; and use of deceptive trade names or trademarks.

"It will be seen that all of these acts or practices are designed to induce a potential buyer to purchase goods or services. They all involve affirmative acts, even in a case where the deception consists of the failure to disclose a material fact in advertising a product. See Federal Trade Comm'n v. Colgate-Palmolive Co., 380 U.S. 374, 13 L.Ed.2d 904, 85 S.Ct. 1035 (1965).

"The word 'acts' connotes action—not inaction. *See* Black's Law Dictionary (4th ed. rev. 1968); *Webster's Third New Int'l Dictionary* (1968). 'Practices' is defined in Black's Law Dictionary as [a] succession of acts of a similar kind or in a like employment.' The relevant definitions in *Webster's* also employ words denoting action.

"But assuming that, however anomalous the concept appears, there may be circumstances in which a mere failure to take action may amount to an 'unfair act or practice' under the act, such

an act or practice must still be one which is designed to effect a sale.

"*As the federal courts have construed these words in their context, and as their ordinary meaning would indicate, they refer to acts or practices of a defendant which unfairly induce a consumer to buy something. We are cited to no authority holding to the contrary.*" (Emphasis added).

In *Lightfoot v. MacDonald*, 86 Wn.2d 331, 544 P.2d 729 (1976), the court while discussing the same Consumer Protection Act held at 86 Wn.2d 333, 334:

"It is the obvious purpose of the Consumer Protection Act to protect the public from acts or practices which are injurious to consumers and not to provide an additional remedy for private wrongs which do not affect the public generally. This purpose is stated in RCW 19.86.920:

"The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition.

"That provision continues:

"It is the intent of the legislature that, in construing this act, the courts be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters . . . [and] this act shall be liberally construed that its beneficial purposes may be served.

"It is, however, the intent of the legislature that this act shall not be construed to prohibit

acts or practices which . . . are not injurious to the public interest, . . .

"The federal statute prohibiting unfair and deceptive acts or practices in commerce is found in the Federal Trade Commission Act, 15 U.S.C. § 45. The basic purpose of that chapter is to protect the public. *Federal Trade Comm'n v. Cinderella Career & Finishing Schools, Inc.*, 404 F.2d 1308 (D.C. Cir. 1968); 87 C.J.S. *Trade-marks, Trade-names and Unfair Competition* §§ 226-227 (1954); 55 Am.Jur.2d *Monopolies, Restraints of Trade and Unfair Trade Practices* § 747 (1971). There is no private remedy provided in the federal act and all enforcement is left in the hands of the Federal Trade Commission. *Under that act the United States Supreme Court has held that to justify filing a complaint, the public interest must be specific and substantial. Federal Trade Comm'n v. Klesner*, 280 U.S. 19, 74 L.Ed. 138, 50 S.Ct. 1, 68 A.L.R. 838 (1929). The court said in that case that 15 U.S.C. § 45 does not provide private persons with an administrative remedy for private wrongs and the community's interest in seeing that private rights are respected is not a sufficient public interest. Public interest may exist although the practice deemed unfair does not violate any private right." (Emphasis added).

The court in *Lightfoot, supra*, at 86 Wn.2d 336, 337, stated:

"As the statute indicates and as we have previously recognized, in determining the scope of the act and the types of acts or practices prohibited by it, this court must look to the cases which have been decided under the federal act. *State*

v. Ralph Williams' North West Chrysler Plymouth, Inc., 82 Wn.2d 265, 510 P.2d 233 (1973); *Johnston v. Beneficial Management Corp. of America*, 85 Wn.2d 637, 538 P.2d 510 (1975). In directing the court to seek guidance from those cases, the legislature undoubtedly had in mind the fact that under the federal act the decision whether a practice or act is one which is proscribed, rests with the Federal Trade Commission, an administrative agency. In *Federal Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233, 31 L.Ed.2d 170, 92 S.Ct. 898 (1972), the United States Supreme Court said, at page 249:

'A court cannot label a practice "unfair" under 15 U.S.C. § 45(a)(1). It can only affirm or vacate an agency's judgment to that effect. "If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment." [*Citing SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943).] And as was repeated on other occasions:

'For the courts to substitute their or counsel's discretion for that of the Commission is incompatible with the orderly functioning of the process of judicial review. This is not to deprecate, but to vindicate (see *Phelps Dodge Corp. v. Labor Board*, 313 U.S. 177, 197), the administrative process, for the purpose of the rule is to avoid "propel[ling] the court into the domain which Congress has set aside exclusively for the administrative agency." [*SEC v. Chenery*

Corp.] 332 U.S., at 196. *Burlington Truck Lines* [*v. United States*, 371 U.S. 156, 9 L.Ed.2d 207, 83 S.Ct. 239 (1962)] at 169.

"*Since the legislature did not see fit to set up an agency to administer the Consumer Protection Act, the courts of this state do not sit as reviewing bodies to pass upon the propriety of an administrative decision but must decide in the first instance whether an act or practice is unfair or deceptive and whether it is in 'trade or commerce.'* In making such a determination, our only guide must be the one provided by the legislature, the decisions of federal courts approving or rejecting administrative determinations under the act. *State v. Ralph Williams' North West Chrysler Plymouth, supra; Johnston v. Beneficial Management Corp., supra.*

"Thus it behooves a complainant, if our own decided cases provide no precedent, to bring to the court a case or cases in which federal courts have found the same act or practice of which he complains, or one of the same nature, to be within the prohibition of the statute." (Emphasis added).

Notwithstanding the foregoing, the Washington State Supreme Court in *State of Washington v. Ralph Williams, et al.*, in their Opinion at 87 Wn.2d 298 (Appendix A) eliminates reliance by *anyone* as a requirement and upholds the imposition of enormous penalties unrelated to any tangible standard. It is interesting to note that the *Vacu-Matic Carburetor Co.* case, *supra*, cited by the Washington State Supreme Court as its federal authority to follow in the Appendix A opinion utilized a very tangible standard and granted an injunc-

tion quite grudgingly as to a specific tested item of machinery. It does not support the proposition that literally unlimited penalties may be assessed without proof of reliance or utilization of tangible standards which may be the subject of judicial review.

Section 19.86.020 of the Consumer Protection Act gives notice of what is prohibited as follows:

> "19.86.020. Unfair competition practices declared unlawful.
>
> "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

Appellants respectfully state that Section 19.86.020 of the Consumer Protection Act is insufficiently precise to give notice of what is prohibited and that the penalties which are designated in paragraphs E and F of the Judgment and Decree and which have their alleged authorization in Section 19.86.140 of the Consumer Protection Act are in fact criminal penalties.

Appellants submit that the penalties which the Consumer Protection Act provides in RCW 19.86.140 for violation of RCW 19.86.020 are criminal penalties which have been imposed upon appellants by said Judgment and Decree and the application of the Consumer Protection Act, in violation of appellants' federal constitutional rights and specifically under Amendments I, V, VIII and XIV to the United States Constitution.

One of the earliest discussions of penalties appears in *Huntington v. Atrell,* 146 U.S. 657, wherein the court said:

> "The test whether a law is penal, in the strict and primary [criminal] sense, is whether the wrong

> sought to be addressed is a wrong to the public or a wrong to the individual . . . Wrongs are divisible into two sorts of species: *private wrongs* and *public wrongs.* The former are an infringement or privation of the private or civil rights belonging to individuals; the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation [i.e., officially imposed moral stigma] of crimes and misdemeanors. . . . [The test is whether] in its essential character and effect, [it is] a punishment of an offense against the public, or a grant of a civil right to a private persons."

In the instant case, the penalties which have been imposed upon appellants by the Judgment and Decree by application of RCW 19.86.140 of the Consumer Protection Act were imposed as damages to redress alleged public wrongs, *Seaboard Sur. Co. v. Ralph Williams' Northwest Chrysler Plymouth, Inc.,* 81 Wn.2d 740, 504 P.2d 1139 (1973); and under the rule stated by the Supreme Court in *Huntington, supra,* are therefore penal or criminal penalties.

In *Bowles v. Trowbridge,* 60 F.Supp. 48, the price administrator brought an action for treble damages for violation of the Emergency Price Control Act. The question was whether an action for treble damages is one for a penalty. The specific statute involved was 50 U.S.C.A. § 925e providing for treble damage suit by the ultimate consumer and such suits by the administrator on behalf of the United States. The damages for which he sues were usually to be based upon an accumulation of sales to a number of customers,

and are many times greater than the amount of treble damages the buyer may ordinarily claim. The court used the *Huntington* "public interest" test in holding the action by the administrator was "penal" for the purpose of the Fifth Amendment self-incrimination clause; accord, *Bowles v. Farmers Nat. of Lebanon*, 147 F.2d 425.

Further, a civil penalty is identical in its purpose and monetary effect to a fine. Both are punitive exactions by the government from a person for misconduct imposed to deter such misconduct in the future. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368; *People v. Witzerman*, 29 Cal.App.3d 175, 105 Cal.Rptr. 284 (1972).

In the instant case, the trial court assessed penalties under the Consumer Protection Act:

1. Without relation to reliance by consumers on purported wrongful conduct:

2. Without relation to purported conduct by appellants and without tangible standards:

3. On a repetitive basis for the same purported conduct on a cumulative and disjunctive basis against all appellants.

In *People v. Superior Court of Los Angeles County*, 9 Cal.3d 256, 107 Cal.Rptr. 192, 195, 196, the court, in construing a similar "penalty" provision and faced with the task of determining what a "violation" was, stated as follows:

> "We hold that the Attorney General has only one cause of action against a defendant for violating section 17500, but that the amount of civil penalties which may be imposed under section 17536 is dependent upon the number of 'violations' committed by a defendant.
>
> "*We determine what constitutes a 'violation' as the term is used in section 17536.* The Attorney General contends that each misrepresentation by a defendant constitutes a separate violation subject to a $2,500 civil penalty. As the number of misrepresentations allegedly committed by defendant Jayhill alone is no less than 25, under the Attorney General's theory Jayhill would be liable for $62,500 penalty for each customer solicited if the allegations were proved. While the intent of section 17536 was to strengthen the hand of the Attorney General in seeking redress for violations of section 17500, *it is unreasonable to assume that the Legislature intended to impose a penalty of this magnitude for the solicitation of one potential customer. Rather, we believe the Legislature intended that the number of violations is to be determined by the number of persons to whom the misrepresentations were made, and not by the number of separately identifiable misrepresentations involved. Thus, regardless of how many misrepresentations were allegedly made to any one potential customer, the penalty may not exceed $2,500 for each customer solicited by a defendant.*" (Emphasis added).

The foregoing decision is noteworthy in several respects:

1. A "violation" was deemed applicable only to a named, identifiable person.

2. No more than one penalty was imposed in favor of the State for each named, identifiable person.

3. That regardless of the number of purported misrepresentations, a penalty could not exceed the maximum single amount for each named, identifiable person.

The Judgment and Decree imposed penalties authorized by the Consumer Protection Act without relation to named persons or events. In addition, the penalties were multiplied by the various causes of action and multiplied by the number of defendants without any relation to the theory under which certain of the appellants, to wit, Ralph Williams Inc. and Williams were held liable by the trial court.

Appellants respectfully submit that the penalties imposed by paragraphs E and F of the Judgment and Decree in the instant case are so substantial that they go beyond mere deterrence and become those of punishment for retribution. Due process requires such penalties to be imposed only in criminal trials with all the safeguards guaranteed by the Fifth and Sixth Amendments, including indictment, notice, confrontation, jury trial, assistance of counsel and compulsory process for obtaining witnesses.

RCW 19.86.140 provides in part:

> "Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation. . . ."

To the extent that said provision and the Judgment and Decree provide that each violation of Section 19.86.020 constitutes a distinct cause of action for which a separate and distinct penalty shall be paid, the penalties are punitive, excessive and penal in nature. *See, People v. Superior Court of Los Angeles County,* 107 Cal.Rptr. 192, 195.

Furthermore, Section 19.86.920 of the Consumer Protection Act provides in part as follows:

> "It is the intent of the legislature that, in construing this act, the court be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters. . . ."

However, with respect to the Federal Trade Commission Act, 15 U.S.C., Section 45, civil penalties cannot be imposed until the respondent (1) consents to or is forced to obey a cease and desist order and (2) subsequently violates that order. In other words, only after a cease and desist order has been issued does a respondent risk civil penalties for violating the law.

Appellants therefore submit that RCW 19.86.140 and the Judgment and Decree provide for criminal penalties as to these appellants in violation of Amendments I, V, VI, VIII and XIV to the United States Constitution.

In addition, appellants have been held in contempt for the non-payment of the sums of money set forth in Appendices C and D. Throughout the trial and appeal to the Supreme Court of the State of Washington, appellants contended that such Orders of contempt were in violation of the Fourteenth Amendment of the Constitution of the United States and particularly Section 1 thereof. The Washington State Supreme Court in its Opinion (Appendix B) 87 Wn.2d 327, held that the trial court's inherent powers were such that no constitutional deprivations had occurred. Appellants submit that this Order places a court not only beyond the legislature in its particular jurisdiction, but enables

a state judiciary to create debtors' prisons and hold persons in contempt for purported activity beyond their control; out of the presence of the court; and without the necessity of a court making findings of the basis for the purported contemptuous conduct.

Federal Questions Are Substantial.

This appeal presents important and substantial questions concerning the regulation of commerce not only in one state but certainly interstate commerce as well. The law established by the Washington State Supreme Court in this case, places all before it in a perilous, and indeed, intolerable position in relation to basic substantive and procedural safeguards, as well as placing a defendant in the position of never being able intelligently to know whether or not a violation of the so-called Consumer Protection Act has occurred and the amount of penalties which may then be imposed. In addition, anyone unable to pay these limitless sums may be subject to imprisonment under the state's contempt theory.

The State Supreme Court, by its decisions has:

A. Held that reliance is not required for penalties to apply.

B. Held that a tangible standard is not required by the trier of fact.

C. Authorized the imposition of penalties without relation to either actual damages or prescribed wrongful conduct.

D. Disregarded the application of federal statutes and cases in derogation of any minimal substantive or procedural requirements.

E. Infringed on ARTICLE I, section 8, clause 3 of the United States Constitution which provides:

> "The Congress shall have Power . . . To regulate commerce with foreign nations, and among the several States . . ."

The "commerce clause" was designed to establish equality among the several states as to commercial rights and to prevent the confusion which local jealousies or interests might be disposed to introduce and maintain. *Veazie v. Moor,* 14 How., 55 U.S. 568, 14 L.Ed. 545.

Under the opinions below one should not logically deal in any way in any activity which would subject them to RCW 19.86 or its application. One doing so risks limitless liability and confinement.

F. Disregarded minimum due process requirements and adversely affected all forms of commerce.

Appellants submit that RCW 19.86.020 on its face and particularly as applied does not give adequate notice of the conduct prohibited and thereby violates the due process requirements of the Fourteenth Amendment to the Federal Constitution. See *Connelly v. General Const. Co.,* 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926); *Lanzetta v. New Jersey,* 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939); and that minimal due process requirements necessitate the utilization of a standard of conduct that provides for judicial review and not submitting the interpretation of an uncertain statute by improper delegation of legislative power to a judge or jury.

A federal statute similar to RCW 19.86.020 was before the Supreme Court in *United States v. Cohen*

Brewing Company, 255 U.S. 81, 65 L.Ed. 516 (1920). The statute, enacted in wartime, read:

> "That it is hereby made unlawful for any person wilfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries; to conspire, combine, agree, or arrange with any other person . . ." 65 L.Ed. 519.

The Federal District Court sustained the Demurrer, stating, 65 L.Ed. at p. 520:

> "Congress alone has power to define crimes against the United States. This power cannot be delegated to the courts or to the juries of this country . . .
>
> "Therefore, because the language is vague, indefinite, and uncertain, and because it fixes no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against him, I think it is constitutionally invalid, and that the demurrer offered by the defendant ought to be sustained."

The United States Court agreed and held, at 65 L.Ed. 520-1 in language almost meant for this case:

> "Observe that the section forbids no specific or definite act. It confines the subject-matter of the investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee, and the result of which no one can foreshadow or adequately guard against. In fact, we see no reason to doubt the soundness of the observation of the court below in its opinion to the effect that, to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury."

and

> "That it results from the consideration which we have stated that the section before us was void, for repugnancy to the Constitution, is not open to Question. *United States v. Reese,* 92 U.S. 214, 219, 220 23 L.Ed. 563, 565; *United States v. Brewer,* 139 U.S. 278, 288, 35 L.Ed. 190, 193, 21 Sup.Ct.Rep. 538; *Todd v. United States,* 158 U.S. 278, 282, 39 L.Ed. 982, 983, 15 Sup. Ct. Rep. 887;"

In *Champlain Refining Company v. Corporation Commission,* 286 U.S. 210, 243, 76 L.Ed. 1062, 1083 (1932), an Oklahoma statute prohibited the production of crude oil in a manner which constituted "waste" and, in part, attempted to define "waste". The court stated at 286 U.S. at 243, 76 L.Ed. p. 1083:

> "The meaning of the word 'waste' necessarily depends on many factors subject to frequent change. No act or definite course of conduct is specified as controlling and, upon the trial of one charged with committing waste in violation of the Act the court could not foresee or prescribe the scope of the inquiry that reasonably might have a bearing on or be necessary in determining

whether in fact there had been waste. It is no more definite than would be a mere command that wells shall not be operated in any way that is detrimental to the public interest in respect to the production of crude oil."

and

"In the light of our decisions, it appears upon a mere inspection that these general words and phrases are so vague and indefinite that any penalty prescribed for their violation constitutes a denial of due process of law. It is not the penalty itself that is invalid but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." 286 U.S. at 243, 76 L.Ed. at 1083.

The Fourteenth Amendment to the federal Constitution provides that no state shall "deprive any person of life, liberty or property without due process of law".

Under *Shelley v. Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161, it is clear that a state court's judgment may constitute a denial of equal protection or due process. The state acts within the scope of the Fourteenth Amendment not only where its judicial officers deny procedural due process or equal protection but also where they deny substantive rights guaranteed by the Amendment; the Fourteenth Amendment covers exertions of state power in all forms.

The statutes in question and the opinions applying them against appellants set forth a devastating combination of elimination of constitutional safeguards and economic chaos. The victims of the statutes will be all citizens and commerce. Appellants represent an

example of what can occur when that liberty and property assured to all under the Fourteenth Amendment to the Constitution of the United States is abrogated.

Conclusion.

The Court should take jurisdiction of this appeal.

Respectfully submitted,

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APPENDIX A.

Opinion of Supreme Court of the State of Washington v. Ralph Williams, et al., 87 Wn.2d 298, ... P. 2d ..... (1976).

[1] Continuance — Terms — Discretion of Court — Review. The setting of terms for the granting of a continuance, as authorized by CR 40(d), is within the trial court's discretion, and its determination of proper terms will be overturned on appeal only for a manifest abuse of such discretion.

[2] Appeal and Error — Dismissal — Discretion of Court — Significant Question. Exercise of an appellate court's inherent power to dismiss an appeal upon the appellant's failure to comply with trial court orders is discretionary. An appeal need not be dismissed for such noncompliance when the case presents a significant question for review.

[3] Equity — Adequate Remedy at Law — Discretionary Governmental Action. Possible governmental action which is discretionary in nature does not constitute an adequate remedy at law which would preclude the granting of equitable relief.

[4] Unfair Competition — Injunctive Relief — Cessation of Activity — Effect. The cessation of complained-of unfair practices does not render an action for injunctive relief moot unless it is absolutely clear that the conduct could not reasonably be expected to recur. A greater showing of abandonment is required when the activity ceased only after legal action was instituted.

[5] Unfair Competition — Injunctive Relief — Discretion of Court — Review. Injunctive relief against

possible future acts of unfair competition requires a showing that there is a cognizable danger of such acts occurring. A trial court has broad discretion to grant or deny injunctive relief in such a case and its determination will be overturned only upon a strong showing of abuse.

[6] Appeal and Error — Review — Issues Not Raised in Trial Court — In General. In general, an appellate court will not consider any issues which were not first presented to the trial court.

[7] Consumer Protection — Unfair Competition — Costs — Basis — Affidavit. An award of costs to the prevailing party in a consumer action, as authorized by RCW 19.86.080, may be based entirely upon such party's affidavit without violating the opposing party's due process rights when a copy of the affidavit was served on the opposing party and he had an adequate opportunity to inquire into specific details but chose not to do so or to raise any objection.

[8] Consumer Protection — Unfair Competition — Costs — Discretion of Court — Review. The amount of attorneys' fees and costs awarded the prevailing party in a consumer action, under RCW 19.86.080, is within the trial court's discretion and will be overturned only for manifest abuse.

[9] Pleading — Complaint — Sufficiency — Incorrect Statutory Reference. Pleadings are intended to give notice to the court and opposing parties of the general nature of the claim being asserted. An error in designating a statute under which relief is sought does not preclude recovery when the remainder of the complaint makes clear the nature of the relief requested.

[10] Consumer Protection — Unfair Competition — Civil Penalties — Application. RCW 19.86.140, which provides a civil penalty for "each violation" of the Consumer Protection Act, does not limit the possible number of violations to the number of aggrieved consumers but rather allows recovery of a penalty for each distinct and separate cause of action, *i.e.*, each alleged violation which requires proof of divergent facts.

[11] Consumer Protection — Unfair Competition — Civil Penalties — Consumer Reliance — Necessity. An award of civil penalties under RCW 19.86.140 for unfair and deceptive practices does not require any showing of consumer reliance on the defendant's wrongful conduct but simply a showing that such conduct had the capacity or tendency to deceive.

[12] Consumer Protection — Unfair Competition — Civil Penalties — Multiple Defendants — Nature of Liability. Under RCW 19.86.140, which directs that "every person" violating the Consumer Protection Act shall pay a civil penalty, the liability of multiple defendants for penalties imposed in a consumer action is individual and not joint.

[13] Evidence — Business Records — Television Tapes — Audio Portion. Audio tapes which a television station is required to retain in the regular course of business under federal law constitute business records admissible under the terms of RCW 5.45.020.

[14] Evidence — Television Tapes — Audio Portion — Absence of Visual Portion — Effect. The audio portion of a television tape may properly be admitted without the accompanying visual portion absent any showing of prejudice.

[15] Consumer Protection — Unfair Competition — Certainty of Statute — In General. The provisions of the Consumer Protection Act (RCW 19.86) which prohibit "unfair methods of competition" and "unfair and deceptive acts or practices" are not unconstitutionally vague.

[16] Consumer Protection — Unfair Competition — Restitution — Court-Ordered Procedure. In a consumer action brought by the Attorney General, the trial court has the discretion, under RCW 19.86.080, to establish a procedure to regulate the restitution of unlawfully held consumer property. The use of a court-appointed master to rule on consumer claims does not violate a defendant's due process rights when there is a provision for ultimate review by the trial court.

[17] Consumer Protection — Unfair Competition — Restitution — Double Recovery. The restitution of property in a consumer action brought by the Attorney General, as permitted by RCW 19.86.080, does not constitute an award of damages, or subject the defendant to the possibility of an invalid double recovery.

[18] Consumer Protection — Unfair Competition — Restitution — Scope of Order. A restitution order entered pursuant to RCW 19.86.080 in a consumer action brought by the Attorney General applies to all consumers whose property is being unlawfully held by the defendant and not simply those who testified at trial.

[19] Corporations — Officers — Misconduct — Liability for Penalties — Nature. The liability of a corporate officer who participates in wrongful conduct

by the corporation or who approves such conduct is individual and not joint or cumulative.

[20] Appeal and Error — Findings of Fact — Review — In General. A trial court's findings of fact will be upheld on appeal when they are supported by substantial evidence.

[21] Evidence — Opinion Evidence — Expert Testimony — Examination of Records — Summary by Examiner. When books and records which are admissible evidence are too numerous to be satisfactorily or conveniently examined by the jury, a qualified person who has examined such records may summarize their contents and state his conclusions.

[22] Insurance — Consumer Protection — Unfair Competition — Credit Life Insurance — Disclosure. A seller's failure to disclose that required credit life insurance may be issued jointly to the purchaser and his cosignor and not only on a separate basis constitutes a deceptive practice under RCW 19.86.020 and also violates the provisions of RCW 48.01.030, which generally requires integrity in insurance dealings.

Stafford, C.J., and Wright, J., concur by separate opinion; Dolliver, J., did not particpate in the disposition of this case.

Appeals from judgments of the Superior Court for King County, No. 729320, David W. Soukup, J., entered December 9, 1974. *Affirmed in part; reversed in part.*

Action for relief under various business regulatory acts. The defendants appeal from a judgment in favor of the State.

James C. Young, Ronald L. Hartman, and *Caidin, Kalman, Hartman & Sampson,* for appellants.

Slade Gorton, Attorney General, and *Barbara Rothstein, Thomas L. Boeder,* and *John R. Ellis, Assistants,* for respondent.

In the Supreme Court of the State of Washington.

State of Washington, Respondent, v. Ralph Williams' North West Chrysler Plymouth, Inc.; Ralph Williams, Inc.; Ralph Williams, as President of Ralph Williams' North West Chrysler Plymouth, Inc., as President of Ralph Williams', Inc., and individually, Appellants, Robert Friedman, both as Vice-President of Ralph Williams' North West Chrysler Plymouth, Inc., and individually, Defendant. No. 43644 En Banc.

State of Washington, Respondent, v. Ralph Williams' North West Chrysler Plymouth, Inc.; Ralph Williams, Inc.; Ralph Williams, as President of Ralph Williams' North West Chrysler Plymouth, Inc., as President of Ralph Williams', Inc., and individually, Appellants, Robert Friedman, both as Vice-President of Ralph Williams' North West Chrysler Plymouth, Inc., and individually, Defendant. No. 43745 En Banc.

Filed July 22, 1976.

Appellants are Ralph Williams' North West Chrysler Plymouth, Inc. (North West), a Washington corporation, Ralph Williams, Inc. (RWI), a California corporation, and Ralph Williams, individually and as corporate president of North West and RWI. They appeal from an order imposing terms upon the granting of a continuance and from a judgment assessing civil penalties for unfair and deceptive practices in the operation of an automobile business. The appeals from the

respective orders were consolidated and will be considered seriatim. We affirm both the order and the judgment.

In May of 1968, North West opened its automobile dealership in North Seattle. In October 1970, respondent, the State of Washington, brought an action against appellants claiming violations of the consumer protection act (RCW 19.86), the retail sales installment act (RCW 63.14), and the unfair motor vehicles practices act (RCW 46.70). Respondent also sought civil penalties, restriction of consumers' property in appellants' possession, and an order permanently enjoining appellants from engaging in any future deceptive acts and practices. The dealership continued to operate until December 1970. The State Department of Revenue closed North West because it failed to pay certain excise taxes which it had collected from its customers.

Initially, the trial court concluded there was no possibility North West would conduct future business in Washington State. The court declared the entire case moot and granted appellants' motion to dismiss. In *State v. Ralph Williams' North West Chrysler Plymouth, Inc.,* 82 Wn.2d 265, 268, 510 P.2d 233 (1973), we reversed the trial court's judgment on all grounds and remanded the case for a trial on the merits.

In November 1973, the trial judge set trial for March 11, 1974. Three days before the scheduled trial date appellants' then attorney filed a motion to withdraw. A continuance of the trial date was also requested. The withdrawing attorney initially represented appellants and Mr. Robert Friedman, the general manager of North West. In February 1974, Mr. Friedman dismissed the attorney as his counsel. Mr. Fried-

man and his new counsel commenced settlement negotiations with respondent. Respondent and Mr. Friedman negotiated a consent decree dismissing the amended complaint as it applied to Mr. Friedman. The decree also enjoined Mr. Friedman from engaging in future deceptive practices. Respondent then took another deposition from Mr. Friedman. His depositions supported respondent's position. Original counsel claimed he had an ethical duty to withdraw because of the conflict between appellants and his former client.[1] The trial court denied the motion to withdraw and granted a continuance, if appellants paid $10,000 to respondent for costs of delay and posted a $75,000 bond to protect respondent's potential judgment. The court also found that appellants and their attorney should have reasonably anticipated the ethical difficulties. Appellants appealed the trial court's order.

The Court of Appeals issued an amended order allowing the withdrawal of counsel and quashed the $10,000 terms deposit and the $75,000 bond. However, the court remanded the case to the trial court for a hearing to allow respondent

> an opportunity to make an adequate showing of the actual additional costs, fees and expenses to the State of Washington necessitated by reason of the continuance and following such a hearing

[1](CPR) DR 4-101(B) states:

"(B) Except when permitted under DR 4-101(C) and (D), a lawyer shall not knowingly during or after termination of the professional relationship to his client:

"(1) Reveal a confidence or secret of his client."

The attorney had an ethical duty not to reveal secrets of his former client. He also had a duty to represent appellants zealously within the bounds of the law. (CPR) Canon 6. He could not, however, adequately cross-examine Mr. Friedman without revealing the secrets of his former client.

> the Superior Court may enter an order requiring the above-named petitioners to immediately pay an amount which would compensate the State of Washington for any costs, fees and expenses the court finds reasonably and justly incurred by reason of the continuance; . . .

On April 12, 1974, the trial court conducted a hearing to decide the terms for a continuance. Respondent's attorneys and office personnel filed affidavits concerning the cost of the continuance. Appellants took the depositions of each person who filed an affidavit in support of the allowance of terms. Appellants were given access to relevant documents in respondent's possession. Each affiant also testified at the hearing. The affidavits, depositions, and testimony established the amount of time required to repeat the trial preparation. The court, however, rejected the hourly rates because they were not respondent's actual costs. Respondent based its costs on reasonable fees for similar services in the community. The court directed respondent to submit proof of the actual salaries of each person involved in the trial preparation. The court also requested respondent to offer proof of any overhead costs. Respondent submitted additional affidavits establishing the actual per-hour cost of the delay. Appellants were given an opportunity to refute the additional affidavits. The court entered an order awarding respondent $13,638.79 in terms. An appeal was taken from this judgment.

Appellants challenge the trial court's decision to award terms for the continuance. CR 40(d) provides:

> (d) Trials. When a cause is set and called for trial, it shall be tried or dismissed, unless

> good cause is shown for a continuance. The court may in a proper case, and *upon terms,* reset the same.

(Italics ours.) This rule vests the trial court with the power to impose terms as the condition for granting a continuance. The amended order of the Court of Appeals also recognized this power when it remanded the case to the trial court for a hearing to determine the actual costs of the continuance. The decision to impose terms is within the discretion of the trial court. We will overturn the court's decision only if there exists a manifest abuse of discretion. *See Peterson v. David,* 69 Wn.2d 566, 569, 419 P.2d 138 (1966).

Appellants contend they did not cause a conflict of interest. Appellants claim the negotiated consent decree caused the conflict. We disagree. The Court of Appeals quoted with approval the original trial court order, which ruled that appellants and their attorney should have reasonably anticipated the ethical difficulty. On remand, the trial court did not reopen this issue. The record clearly supports the conclusion that appellants were responsible for the postponement. Mr. Friedman gave a number of depositions concerning his employment with North West. A simple examination of these depositions would have uncovered the future conflict of interest. Appellants waited until 3 days before the trial date to bring this matter to the trial court's attention. We therefore approve of the imposition of terms as a condition for granting appellants' motion for a continuance.

Appellants also challenge the procedure utilized by the trial court to resolve their continuance motion. CR 43(e)(1) states:

> (1) *Generally.* When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

Respondent's counsel and office personnel submitted affidavits of the actual cost of the delay. The cost including overhead, mailing charges, transportation costs, and lodging for witnesses. The affidavits also established the actual costs for attorneys, investigators, and an accountant. The affiants were the individuals who actually prepared the case for trial. Appellants took the depositions of these affiants and also examined the relevant documents. Further, the trial court concluded two hearings on the matter. Appellants examined each of the respondent's affiants at one of these hearings. Appellants were given every opportunity to refute the affidavits, depositions, and testimony. The procedure is consistent with the guidelines of CR 43(e). We consider the amount of terms reasonable in light of the complexity of the case and the burdensome cost of duplicating the trial preparation. We therefore find no abuse of discretion by the trial court.[2]

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[2]Appellants' final contention concerns a failure of the trial court to enter findings of fact and conclusions of law. The trial court was not required to enter findings and conclusions. *See* CR 52(a)(5)(B).

The trial on the merits finally began on September 10, 1974. The trial court found numerous violations of RCW 19.86, RCW 63.14, and RCW 46.70. Following is a summary of these violations.

Appellants claimed they sold cars at prices lower than other area car dealers. Appellants also featured automobiles as specific illustrations of their low prices. Appellants' prices were, to the contrary, substantially higher than competitors' prices. In fact, the advertised illustrations were not even representative of their own prices. Appellants stated they could sell automobiles for lower prices, because they received volume discounts. An automobile industry witness testified each dealer pays the same invoice price for a car, and no dealer receives volume discounts.

Appellants represented in their advertisements that each purchaser received warranties on certain cars purchased from them. Many of appellants' automobiles came with a "12 by 12" warranty. This warranty provided a "12-month warranty at 10% over cost on all parts and labor or 12,000 miles, whichever occurs first." Appellants advertised they would perform any warranty repairs in their "huge factory-type reconditioning plant." The evidence revealed 12-by-12 warranty repairs were rarely available and when the warranty applied, the cost of the warranty repairs equaled or exceeded the repair costs at other reliable dealerships without any warranty whatsoever. Appellants did not possess a large reconditioning plant. Appellants' maintenance department was inadequate to service even a portion of the cars sold at North West. Appellants' sales personnel also made warranty statements concerning the condition of the cars and the applicability of the various North West warranties. These statements were false and deceptive.

Appellants' advertisements featured used car sales with easier credit terms than other dealerships. The advertisements misled consumers. The credit terms were substantially higher than advertised and more expensive than the terms offered by other dealers. The advertisements offered cars for sale for a minimal down payment and a single monthly payment—"$79 down, $79 per month." Contrary to the advertisements, North West demanded a substantial cash down payment. If the customer could not afford the down payment, North West required the person to finance it with a small loan institution.

Newspaper and television advertisements offered quality used cars for sale. Many of the cars possessed mechanical defects, body damage, and unusually high mileage. The advertisements concealed these defects. Also, the advertisements were not bona fide offers to sell the cars. They were designed to lure consumers into North West. After a customer arrived, sales personnel disparaged the advertised cars or told customers the cars had been sold.[3] Appellants then utilized a comprehensive sales system designed to confuse and deceive the customer. A North West salesperson switched the customer's attention to other cars at prices and terms more favorable to appellants. The staff member refused to give the prices of other cars or quoted

[3]One customer witness testified she saw appellants' late-night advertisement, which offered cars for sale at $60 down and $60 per month. The very next morning, the consumer drove to the dealership and asked to see these cars. The salesperson told the consumer the cars were "cheapies," and "[t]hey were all sold last weekend." The consumer left the dealership without purchasing an automobile. The consumer observed the same television advertisement the next weekend.

prices lower than the actual sales prices. The salesperson also misrepresented the value that would be given on any trade-in models. If the customer expressed a desire to purchase the car, another North West staff member negotiated the contract. This person informed the customer of the increased price and monthly payments. The customer was given little opportunity to even read the contract. A staff member read pertinent portions of the contract to the customer. The employee tape recorded a portion of the negotiations and told the customer North West utilized the recording to resolve future disputes. However, the employee only taped the self-serving portions of the transaction. This recording did not accurately represent the negotiations. Appellants used these recordings to discourage and intimidate future complainants.

As part of the normal sales procedure, appellants' sales personnel would obtain a customer's car for trade-in evaluation purposes. When a customer later objected to the increased price or merely declined to buy a car, the employee told the customer he could not return his automobile. This procedure was designed to exert pressure upon consumers to buy an automobile.

Appellants also informed customers that banks and other financial institutions required credit life and disability insurance. These institutions did not require such insurance. The sale of this insurance directly benefited appellants. RWI owned Banner Life Insurance Company, the agency which sold the insurance, and Williams owned the underwriter company.

Appellants also charged consumers $200 to $500 for dealer preparation on all of its cars. Appellants did not disclose this cost until after the consumer

agreed to buy the car. Appellants performed minimal dealer preparation or did not prepare the cars at all.[4]

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[4]The testimony of two witnesses illustrates appellants' sales operations. One witness saw appellants' television advertisement offering new cars for sale at low prices and for $54 down and $54 per month. The individual spoke broken English and possessed minimal reading skills. He went to the dealership to purchase the car. A staff member showed him a car, told him the car was new, and quoted a $2,600 purchase price. The consumer agreed to buy the car, and he presented a $50 cash down payment. Another salesperson informed the consumer of an additional $500 down payment. The consumer financed the down payment with a small loan company. Also, the consumer was told he had to purchase credit insurance. The salesperson sold both the consumer and his wife credit life and disability insurance. The total price of the car was $3,937.62, and this exceeded the retail sticker price. The terms of the sale required the consumer to pay $125 per month plus his monthly payment to the small loan company. The negotiations lasted 2 hours and involved four sales personnel. After signing the contract, the consumer discovered he had purchased a demonstrator and not a new car. Further, the car immediately developed mechanical problems. The consumer called the dealership and was told he had to wait 3 weeks for a service appointment. He eventually took the car to another automobile dealership.

Another witness testified he saw an advertisement offering a 9-passenger station wagon at a very attractive price. The consumer and his family, including his father and mother, drove to the dealership and asked a salesperson to show them the automobile. The car was in the back of the lot behind a fence. It was in poor condition and possessed unusually high mileage. The consumer informed the staff member he was not interested in the automobile. The salesperson switched the consumer's attention to a new 1970 station wagon for $4,700. The staff member also told the consumer he would pay a $130 monthly payment. The consumer agreed to purchase the car. However, during "closing" negotiations another staff member informed the consumer that the price of the automobile was $6,500. He also quoted a $250 monthly payment. The consumer declined to purchase the car. He asked the salesperson for the keys to his own automobile, which had been driven to another part of the dealership to be appraised for trade-in purposes. The consumer explained to the salesperson:

> It's getting late. My father is a heart patient. He's been in the hospital for 47 days. He's only been out about three weeks. He's on medication. . . . And we hadn't

(This footnote is continued on next page)

Seattle-First National Bank and Chrysler Credit Corporation purchased the retail installment contracts from North West. These financial institutions repossessed many of the automobiles sold by North West, and they returned the automobiles to North West for resale. Appellants resold many of the cars for a price greater than the amount owed on the contract. Appellants did not return the profit of these sales to the initial purchasers as required by RCW 62A. 9-504.[5]

Finally, North West sold its new and used cars for a higher gross profit than any other dealer in the Seattle area. In light of the above deceptive acts and practices, many of the consumers were charged unconscionable prices for North West automobiles.

The trial court ruled appellants flagrantly and intentionally engaged in the above deceptive acts and practices.[6] Substantial evidence supports these violations.

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expected to be more than a couple hours when we left. We hadn't brought his medication with us and we had to get him home and get him on that.

The sales personnel refused to return his car. A staff member told the consumer his car was sold. He eventually was pressured into purchasing another used car. These negotiations lasted over 7 hours.

[5]RCW 62A.9-504(2), in part, provides:

"(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency."

[6]Each of the above practices violated RCW 19.86.020, which provides: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

Alternatively, many of the practices did not meet the requirements of RCW 46.70 and RCW 63.14. Each television and newspaper advertisement violated RCW 46.70.180(1), which, in part, provides:

> Each of the following acts or practices is hereby declared unlawful:

The trial court assessed civil penalties against each appellant. The court found Williams liable for $279,000, RWI liable for $289,250, and North West liable for $289,250. The court also ordered each appellant to pay costs and attorney fees in the amount of $389,258.20. The court enjoined appellants from engaging in any of the above deceptive practices. Finally, the court entered a restitution order which required appellants to place $142,000 in a trust account for the purpose of restoring consumers' property in appellants' possession.

We also must describe in detail the complex interrelationship of appellants. Williams owned all of the stock in RWI and North West. RWI and North West are part of a corporate conglomerate which Williams characterized as "the world's largest car dealership." The directors and officers of RWI are also directors and officers of North West. RWI is a management corporation which controls all of Williams' dealerships. North West conducted business in accordance with a management contract executed with RWI. A provision within the contract enabled RWI to receive fees for management services it never performed.

Williams managed and controlled both RWI and North West. Williams trained North West's general

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(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive or misleading, . . .

RCW 63.14.020 required appellants to include the entire agreement in a single document. RCW 63.14.040 required appellants to make detailed disclosures within the sales contract. Appellants did not comply with either of these provisions. Also, the service charge in appellants' contracts exceeded the maximum amount allowable under RCW 63.14.130.

managers at one of his Southern California dealerships. The entire sales operation at the North West dealership was identical to the systems used at Williams' California dealerships. Williams also designed and produced North West's newspaper and television advertisements.

Williams and RWI made all decisions which concerned North West's financial affairs. The officers of RWI were authorized to sign checks and draw money out of North West's bank accounts. North West also provided RWI with interest-free loans. RWI loaned the money acquired from North West to other Williams' dealerships that were financially troubled. Williams opened a North West bank account in California with his name as the only signature on the account. Williams personally borrowed money from this North West California account. The money owed to North West by both Williams and RWI was repaid into this California account. The general manager of North West did not know about this California account. These repayments were not available to North West when it requested cash to pay its taxes in order to continue its operations. In fact, during the last months of 1970, North West sent its daily cash receipts to RWI. RWI supplied North West with the necessary capital to meet its daily operating expenses. All of this evidence clearly established that North West and RWI were part of a single financial entity owned, managed, and controlled by Williams.

As we have indicated, appellants appealed the trial court judgment. As a preliminary matter, we note that an appellate court possesses the inherent power to dismiss an appeal when a party disobeys certain trial court orders. *See Arnold v. National Union of Marine Cooks & Stewards Ass'n,* 42 Wn.2d 648, 257 P.2d

629 (1953), *aff'd, National Union of Marine Cooks & Stewards Ass'n v. Arnold,* 348 U.S. 37, 99 L. Ed. 46, 75 S. Ct. 92 (1954); *Pike v. Pike,* 24 Wn.2d 735, 740-43, 167 P.2d 401 (1946); *cf. Helard v. Helard,* 22 Wn.2d 950, 155 P.2d 499 (1945). In this case appellants have refused to comply with the trial court's restitution order and its orders concerning ancillary proceedings. Nevertheless, we decline to exercise our discretionary dismissal power because of the nature and significance of the action.

We now proceed to the merits of this appeal. In their brief, appellants advance approximately 100 assignments of error which they consolidated into 13 alphabetical sections. Respondent's brief followed this organizational scheme. For purposes of clarity, this court will resolve each assignment of error as it appears in appellants' brief.

Section A.

Appellants first challenge the issuance of the injunction. Appellants need a license to conduct an automobile business within Washington State, and they maintain the Director of the State Department of Motor Vehicles may refuse to renew their license. Appellants claim this represents an adequate remedy of law. We disagree. RCW 46.70.101[7] gives the director the discretionary power to grant or deny an automobile dealership license. The director is not required by law to reject appellants' license application. Further, the trial

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[7]RCW 46.70.101, in part, states:

"The director may by order deny, suspend or revoke the license of any vehicle dealer, vehicle manufacturer, or vehicle salesman or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, . . ."

court did not enjoin appellants from engaging in the automobile business altogether. It enjoined them from engaging in future deceptive practices. A trial court should not deny equitable relief based on speculation that an administrative agency will exercise its discretionary power and deny appellants a license. Thus, the remedy asserted by appellants is uncertain and does not bar appropriate equitable relief. *Davies v. Seattle,* 67 Wash. 532, 535, 121 P. 987 (1912).

Appellants also claim respondent did not enter proof of any commercial activity by appellants after December 1970. Appellants contend the need for injunctive relief is moot.

Cessation of illegal conduct does not deprive a tribunal of the power to hear and determine the case; *i.e.,* it does not render the case moot. A court may need to settle an existing controversy over the legality of the challenged practices. Also, if a court declares a case moot, a defendant may resume the prior illegal practices. Most courts refuse to grant defendants such a powerful weapon against public law enforcement. *United States v. W. T. Grant Co.,* 345 U.S. 629, 632, 97 L. Ed. 1303, 73 S. Ct. 894 (1953).

Nevertheless, the issuance of an injunction may be moot if the defendant can demonstrate that "events make it absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." Courts place a heavier burden on parties alleging abandonment of practices where the practices are discontinued subsequent to institution of the suit. *State v. Ralph Williams' North West Chrysler Plymouth, Inc.,* 82 Wn. 2d 265, 272, 510 P.2d 233 (1973); *see United States v. Oregon State Medical Soc'y,* 343 U.S. 326, 333,

96 L. Ed. 978, 72 S. Ct. 690 (1952). Courts must beware of efforts to defeat injunctive relief by protestations of reform. *United States v. Oregon State Medical Soc'y, supra.*

In the present case, appellants are free to continue business operations in the state of Washington. Absent an injunction, appellants may reenter the state and resume the identical deceptive practices. In light of the character of the past violations and this present ability to continue these practices, it is not absolutely clear appellants would refrain from future deceptive practices. Therefore, the trial court possessed the necessary power to hear the case and decide whether to grant injunctive relief.

This court may also review the trial court's decision to grant injunctive relief. The moving party, however, must demonstrate to the court the need for injunctive relief. There must exist a cognizable danger of recurrent violation. The decision to grant or deny equitable relief is within the discretion of the trial court. The trial judge possesses broad discretion, and we will overturn the decision only if there is a strong showing of an abuse of discretion. *United States v. W. T. Grant Co., supra* at 633.

The record clearly establishes systematic and extensive deceptive sales practices. Appellants did not terminate these practices until after respondent filed its suit. In fact, they consistently denied the illegality of these practices and continued them for 2 months after the filing of respondent's suit. Appellants only ceased these practices because the Department of Revenue closed their dealership in December 1970. Appellants' past violations, the involuntary cessation of these violations,

and their continuance in disregard of the lawsuit, all point to a danger of future violations. We deem injunctive relief appropriate, and we find no abuse of discretion by the trial court.

Appellants also maintain that the injunction constitutes an unwarranted interference with interstate commerce. U.S. Const. art. 1, § 8. Appellants did not present this issue to the trial court, and therefore it is not properly before this court. *See Talps v. Arreola,* 83 Wn.2d 655, 658-59, 521 P.2d 206 (1974).

Section B.

Appellants contend the trial court granted costs to respondent in violation of RCW 4.84.090.[8] RCW 4.84.090 does not apply to this action. The trial court awarded costs to respondent pursuant to RCW 19.86.080. This provision states that "the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee." The award of costs and attorney fees is consistent with this statutory directive.

Appellants claim their due process rights were violated because the trial judge awarded costs and attorney fees on the basis of respondent's 3-page affidavit. Appellants received a copy of the affidavit concerning costs and attorney fees almost 2 weeks before the hearing on the matter. Appellants made no request to examine any person or any document which concerned respondent's costs. Appellants clearly were given an opportunity to inquire into the specific details of the affidavit. Appellants chose not to raise any objections. We find no violation of the due process clause.

[8]"The prevailing party, in addition to allowance for costs, as provided in RCW 4.84.080, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The court shall allow the prevailing party all service of process charges in case such process was served by a person or persons not an officer or officers. Such service charge shall be the same as is now allowed or shall in the future be allowed as fee and mileage to an officer. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his attorney, and filed with the clerk of the court, within ten days after the judgment: . . ." RCW 4.84.090.

Appellants also maintain the award was excessive and punitive. The amount of allowable attorney fees and costs is within the discretion of the trial court. We will overturn the court's award only if there exists a manifest abuse of discretion. *Saint Paul Fire & Marine Ins. Co. v. Chas. H. Lilly Co.,* 46 Wn.2d 840, 286 P.2d 107 (1955); *see* RCW 19.86.080. This litigation spans 4 years, two appeals, a number of extraordinary writs, and a 9-week trial. We consider the award reasonable in light of the duration and complexity of the suit. We find no abuse of discretion.

RCW 19.86.920[9] supports our approval of the costs and attorney fee award. This provision directs us to give the consumer protection act a liberal construction. *Accord, Hockley v. Hargitt,* 82 Wn.2d 337, 350-51, 510 P.2d 1123 (1973); *see* Comment, *Reasonable Attorneys' Fees and Treble Damages—Balancing the Scales of Consumer Justice,* 10 Gonzaga L. Rev. 593 (1975). Such awards will encourage an active role in the enforcement of the consumer protection act. This construction places the substantial costs of these proceedings on the violators of the act, and it does not drain respondent's public funds.

[9]"To this end this act shall be liberally construed that its beneficial purposes may be served." RCW 19.86.920.

Section C.

Appellants claim the imposition of civil penalties exceeded the relief sought in respondent's complaint. Pleadings are primarily intended to give notice to the court and adversary party to the general nature of the asserted claim. *Lightner v. Balow,* 59 Wn.2d 856, 858, 370 P.2d 982 (1962). The complaint contained the following paragraph in its prayer for relief:

> F. That the court assess a civil penalty against each defendant of $2,000 for each and every violation of RCW 19.86.020 occurring after May 14, 1970, and before the date of final determination of this action, pursuant to RCW 19.86.130.

The reference in paragraph F to RCW 19.86.130, instead of RCW 19.86.140, the civil penalty section, represents a typographical error. This error did not prejudice appellants, as the remainder of the paragraph clearly gives notice to appellants that respondent sought an award of civil penalties. In fact, in *Seaboard Sur. Co. v. Ralph Williams' Northwest Chrysler Plymouth, Inc.,* 81 Wn.2d 740-41, 504 P.2d 1139 (1973),[10] we interpreted this complaint and stated:

> The Attorney General's suit seeks to enjoin alleged "unfair methods of competition and unfair or deceptive acts or practices" and to *secure a judgment for penalties as provided in the Consumer Protection Act* (RCW 19.86), . . .

[10]In *Seaboard Sur. Co. v. Ralph Williams' Northwest Chrysler Plymouth, Inc.,* 81 Wn.2d 740, 504 P.2d 1139 (1973), we interpreted an insurance contract and held that respondent insurer had no duty to defend appellants in this suit. Our *Seaboard* decision discusses a number of statutes in the consumer protection act which are relevant to this appeal.

(Italics ours.) *Accord, State v. Ralph Williams' North West Chrysler Plymouth, Inc.,* 82 Wn.2d 265, 268, 510 P.2d 233 (1973). Thus, appellants knew of the claim for civil penalties and opposed any imposition of penalties from the outset of the suit. The trial court did not grant relief beyond the relief sought in the complaint.

Section D.

Appellants challenge the award of civil penalties. Specifically, appellants assert that civil penalties should be assessed on the basis of one penalty per consumer and not on the basis of one penalty per violation. *People v. Superior Court,* 9 Cal. 3d 283, 507 P.2d 1400, 107 Cal. Rptr. 192 (1973), a California Supreme Court decision, supports appellants' position. The court there interpreted similar statutory language and determined the number of violations by the number of aggrieved consumers. We decline to follow the one-violation-per-consumer rule.[11] RCW 19.86.140 pro-

[11]A close examination of *People v. Superior Court,* 9 Cal. 3d 283, 507 P.2d 1400, 107 Cal. Rptr. 192 (1973), will uncover the reason for the court's adoption of the one-violation-per-victim rule. The defendants in that case made 25 separate misrepresentations to each consumer in their door-to-door sales of encyclopedias. The trial court assessed a $2,500 penalty for each misrepresentation. The court was particularly concerned with the severity of the judgment and its future economic effect. Each encyclopedia sale resulted in a $62,500 penalty. In order to limit the maximum amount of penalties, the trial court adopted the one-penalty-per-victim rule. The court stated that "it is unreasonable to assume that the Legislature intended to impose a penalty of this magnitude for the solicitation of one potential customer." *People v. Superior Court, supra* at 289. However, the court overlooked an alternative approach. The Cal. Bus. & Prof. Code, § 17536(a) (West Supp. 1975), states: "(a) Any person who violates any provision of this chapter * * * shall be liable for a civil penalty not to exceed two thousand five hundred

(This footnote is continued on next page)

vides: "Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars *for each violation*." (Italics ours.) This statute vests the trial court with the power to assess a penalty for each violation. The violations in this case fall within 10 separate classifications, and each classification represents a distinct and separate cause of action. Each cause of action required respondent to prove divergent facts to establish a violation.[12] Therefore, we hold that each cause of action is a separate violation of the consumer protection act.

Appellants attack the imposition of civil penalties, because the trial court did not find that the consumers

dollars ($2,500) for each violation, . . ." The trial court automatically assessed the maximum amount for each misrepresentation. If the court considered the total amount of penalties too oppressive, it could have reduced the individual penalty for each misrepresentation.

The trial court in the present case did not automatically assess the maximum amount for each violation. The penalties were based on the seriousness of each violation. The judgment included penalties of $250, $500, and $2,000.

Our interpretation of RCW 19.86.140 gives the provision its needed flexibility and is also consistent with RCW 19.86.920, which declares:

> [T]he purpose of this [consumer protection] act is . . . to protect the public and foster fair and honest competition. . . . To this end this act shall be liberally construed that its beneficial purposes may be served.

See Hockley v. Hargitt, 82 Wn.2d 337, 350-51, 510 P.2d 1123 (1973).

[12]A single advertisement may include a number of misrepresentations. For example, some of appellants' advertisements included price misrepresentations and false statements concerning easy credit terms. Respondent established price misrepresentations by presenting evidence which proved that appellants' prices were higher than their advertised prices and higher than their competitors' prices. Respondent established the credit misrepresentations by presenting evidence that appellants required higher down payments and higher monthly payments than their advertised credit terms. Each of these acts is a separate violation of RCW 19.86.020.

relied on appellants' wrongful conduct. A claimant need not prove consumer reliance to establish an unfair or deceptive practice. A claimant must prove that the conduct has the capacity or tendency to deceive. *Vacu-Matic Carburetor Co. v. Federal Trade Comm'n,* 157 F.2d 711 (7th Cir. 1946), *cert. denied,* 331 U.S. 806, 91 L. Ed. 1827, 67 S. Ct. 1188 (1947); *see* Comment, *Toward Effective Consumer Law Enforcement: The Capacity to Deceive Test Applied to Private Actions,* 10 Gonzaga L. Rev. 457 (1975). Respondent clearly met this proof requirement.

Appellants also maintain the penalty assessment is inconsistent with the trial court's findings of fact. We disagree. The court imposed penalties against each appellant on the basis of the specific findings of fact concerning liability. Substantial evidence supports these findings, and we find no error in the assessment of penalties.

Appellants contend their liability for penalties should be joint and not individual. This argument ignores the clear statutory directive of RCW 19.86.140, which states that "[*e*]*very person* who violates RCW 19.86.-020 shall forfeit and pay a civil penalty . . ."[13] (Italics ours.)

Section E.

The trial court based a number of penalty assessments on audio portions of certain television commercials. Appellants claim Exhibits 4.1 through 4.10 were inadmissible because respondent did not present any witness who observed the taping of the commercials.

[13]RCW 19.86.010(1) defines "person" as "natural persons, corporations, trusts, unincorporated associations and partnerships."

Federal law requires a television station to keep these audio tapes in the regular course of business. The custodian of the records identified the tapes. He also described the mode of preparation. These tapes were properly authenticated and admissible under RCW 5.45.020 as business records.[14]

Appellants also assign error to the trial court's decision to admit the audio portions of the commercials without the video portions of the tapes.[15] The trial court repeatedly asked appellants to explain the prejudicial effect of the failure to admit the video portions of the tapes. Appellants failed to establish any prejudice. The video portions of the tapes would not alter appellants' audio misrepresentations. The audio misrepresentations were independent of the video portions of the tapes. We find no error in the failure to produce the video portions of the tapes.

Appellants' final argument with regard to the audio tapes is without merit. Appellants contend the admission into evidence of these tapes renders the consumer protection act constitutionally vague as it is applied. In *State v. Ralph Williams' North West Chrysler Plymouth, Inc., supra* at 279, we clearly held:

> [T]he phrases "unfair methods of competition" and "unfair or deceptive acts or practices" have

[14]"A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission." RCW 5.45.020.

[15]The television station is not required by law to keep the video portions of the commercials in the regular course of business.

> a sufficiently well established meaning in common law and federal trade law to meet any constitutional challenge of vagueness.

Section F.

Appellants assert that the order of restitution violates RCW 19.86.080. This section vests the trial court with the discretionary power to "make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful." In *State v. Ralph Williams' North West Chrysler Plymouth, Inc., supra* at 277, we discussed the purpose of this statute.

> Suits for injunctive relief and restitution enforce the laws of the particular jurisdiction in the public interest by restoring the status quo. Restitution orders are appropriate and necessary as a part of equitable relief. . . . The recovery of that which has been illegally acquired and which has given rise to the necessity for the injunctive relief not only restores the property to the party but insures future compliance where it is assured a wrongdoer is compelled to restore illegal gains.

(Citations omitted.) Also, in *Seaboard Sur. Co. v. Ralph Williams' Northwest Chrysler Plymouth, Inc.*, 81 Wn.2d 740, 746, 504 P.2d 1139 (1973), we described a number of practices which, if proven, warrant restitutory relief.

> Among the practices of the defendants of which the Attorney General complains are these: Obtaining possession of a customer's automobile prior to or during negotiations and then refusing to

> return it if the negotiations were unsuccessful; failing to account to the original buyers for excess money received in resales of repossessed cars; and failure to refund to customers unearned insurance premiums. In proving each of these allegations, the Attorney General would be expected to show specific instances of such practices; the identity of the automobile or the amount of money unlawfully withheld would be customarily shown as a part of that proof. No further proof would be necessary in order to justify the court in ordering restitution.

Respondent met the requisite proof requirements. The record indicates that appellants are in unlawful possession of consumer money and property. For example, appellants did not return the resale profits on repossessed cars. Many consumers paid excessive rates for credit life and disability insurance. Appellants also charged unconscionable prices for a number of their automobiles. Thus, substantial evidence supports the trial court's decision to award restitutory relief.

Appellants claim the restitution order violates their due process rights. The order directs each appellant to take certain steps to accomplish the appropriate restoration of funds. The order also establishes an efficient procedure to allow appellants to challenge each consumer claim. Appellants may challenge each restitution award before a court-appointed master and ultimately before the trial court. Other courts have sanctioned similar restitution orders. See, *e.g., Commonwealth v. DeCotis,* ..... Mass. ....., 316 N.E.2d 748 (1974). The restitution order satisfies the requirements of the due process clause.

This restitution order does not create a class action for damages and subject appellants to double liability. In *Seaboard Sur. Co. v. Ralph Williams' Northwest Chrysler Plymouth, Inc., supra* at 744-46, we stated the difference between restitutory relief and damages.

> It is true that a court may award damages in lieu of an injunction in a proper case, and it may award damages in addition to an injunction, in order to accord the plaintiff full relief. However, as we read the statutes which authorize the Attorney General's action in this case, the legislature did not contemplate that the courts should inquire into the question of damages in an injunction action by the Attorney General. If the legislature considered that the state might be damaged by the acts complained of, it determined in advance the measure of "damages" insofar as the state was concerned and provided for those damages in the civil penalty section, RCW 19.86.140. It also provided a remedy for private persons injured in their business or property in RCW 19.86.090. The loss of profits occasioned by "unfair methods of competition," assuming such a loss can be shown, is such an injury.
>
> . . .
>
> On the other hand, in a suit such as the Attorney General's, proof that the defendants have acquired possession of and are holding property of a customer unlawfully can be reasonably expected as part of the proof of the allegations of unfair and deceptive acts and practices (which also incidentally might constitute "unfair methods of competition"). Where these facts are shown, the court can order restitution without the necessity of hearing additional evidence.

(Footnote omitted.)

In its order, the trial court recognized this difference between restitution and damages when it provided: "Nothing in this order shall be construed to bar any consumer from pursuing any other available remedies." There exists no possibility of double recovery. Each aggrieved consumer may sue appellants and recover proven damages in addition to any restitutory award.[16]

The restitution order applies to all aggrieved consumers. It is not limited to the consumers who testified at trial. *See* Reed, *Consumer Protection in Washington: An Overview*, 10 Gonzaga L. Rev. 391, 403-04 (1975). RCW 19.86.080 directs the court to restore "*to any person* . . . property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful." (Italics ours.) To limit restitution to the consumers who testified at trial would unduly complicate future consumer protection trials. Consumer witnesses would recount repetitious claims of deceptive practices and prolong the litigation.

Section G.

The trial court refused to pierce the corporate veil and hold appellant Williams liable on an "alter ego" theory for the actions of North West. Appellants assign error to the trial court's decision to retain appellant Williams in the suit after determining he was not liable on an alter ego theory. The alter ego theory is not the only one advanced by respondent to hold appellant Williams liable for the deceptive practices. The respondent sought to hold Williams independently liable for his role in formulating and supervising the

[16]The final judgment in this case shall be prima facie evidence in a private action for damages by a consumer under RCW 19.86.090. RCW 19.86.130.

dealership's unlawful activities. The complaint alleges that Williams "controls, directs and formulates the policies and activities [of North West]." The record supports the trial court finding that Williams was personally responsible for many of the unlawful acts and practices of North West.

Appellant Williams' liability is individual, not joint or cumulative. If a corporate officer participates in the wrongful conduct, or with knowledge approves of the conduct, then the officer, as well as the corporation, is liable for the penalties. *See Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 489 P.2d 923 (1971). Corporate officers cannot use the corporate form to shield themselves from individual liability. *Johnson v. Harrigan-Peach Land Dev. Co., supra* at 752.

Section H.

The trial court held RWI liable on an alter ego theory for certain practices utilized by North West.[17] Appellants challenge the use of the alter ego theory as it applies to RWI. However, we need not reach this issue. The record clearly supports the finding that RWI individually participated in the deceptive acts and practices. North West conducted its operation in accordance with a management contract with RWI. Williams and RWI implemented and supervised the entire North West sales operation. Also, RWI made all decisions concerning North West's financial affairs. RWI is personally responsible for the activities of North West and its sales personnel.[18]

[17]The trial court only utilized the alter ego theory to find RWI liable for the deceptive practices in findings of fact Nos. 47 through 75.

[18]The trial court's findings of fact and conclusions of law support our interpretation.

(This footnote is continued on next page)

Section I.

Appellants contend their newspaper advertisements did not violate RCW 46.70.180. The trial court found appellants' advertising to be intentionally deceptive, misleading, and patently false. These advertisements clearly violated RCW 46.70.180(I). Substantial evidence supports these violations. *See Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959).

Section J.

Appellants maintain the trial court improperly admitted Exhibit 278 into evidence. Appellants apparently argue that Exhibit 278 represents incompetent evidence of the profits made on the sales of repossessed automobiles. In *Keen v. O'Rourke*, 48 Wn.2d 1, 5, 290 P.2d 976 (1955), we held:

> Where a fact or facts can be ascertained only by the inspection of numerous books and records, which are themselves proper evidence, and the jury cannot satisfactorily nor conveniently examine the same in court, a qualified person, who has perused the entire mass, may state the result of his examination and use a summary of it to illustrate his conclusion.

(Citation omitted.)

"Defendants Ralph Williams, RWI and RWNWCP [North West] individually controlled, directed, participated in, formulated the policies relating to, had knowledge of, and benefited from the acts and practices described in paragraphs 14 through 57." Finding of fact No. 12.

"The acts and practices described in paragraphs 59 through 75 were engaged in by employees and representatives of RWNWCP as agents of the dealership. Since the entire organization of corporation [was] purportedly run under a management contract with RWI, . . . RWI and RWNWCP must each be responsible for these acts and practices." Finding of fact No. 13.

"Defendant RWI is responsible for the acts and practices of defendant RWNWCP." Conclusion of law 3.

"Defendants and each of them have engaged in the practices set forth in paragraphs 20 through 57 above." Conclusion of law 28.

"Defendants RWI and RWNWCP have engaged in the practices set forth in paragraphs 20 through 76 above." Conclusion of law 29.

Mr. David Hill, respondent's investigator, testified he made a simple but exhaustive study of appellants' consumer records or "deal files" with regard to credit sales in which there was a repossession and subsequent sale. This study presented numerous occasions in which the dealership made a profit on repossession sales after deducting the allowable costs of resale. This profit was never returned to the consumer whose car had been repossessed, nor was there even a procedure set up to do so. RCW 62A.9-504 requires appellants to return this profit to the consumers. Exhibit 278 represents an admissible summary of the violations of this provision.[19]

Section K.

Appellants contend that the trial court erroneously assessed penalties for violations of RCW 63.14.020, .030, and .130. We need not decide this issue. The trial court imposed penalties pursuant to RCW 19.86.-140, not RCW 63.14.

[19]In *State v. Reader's Digest Ass'n*, 81 Wn.2d 259, 276, 501 P.2d 290 (1972), we held "that an act which is illegal and against public policy is per se unfair within the meaning of RCW 19.86.020." *See* Comment, *State v. Reader's Digest Ass'n—A Knockout Punch to Unfair or Deceptive Acts or Practices in Washington?*, 10 Gonzaga L. Rev. 529 (1975). A violation of RCW 62A.9-504 is illegal and against public policy. Therefore, the failure to return profits from repossession sales constitutes a violation of RCW 19.86.020.

Section L.

The final assignments of error concern respondent's cross-appeal. Respondent claims appellants deceived consumers when they did not advise them of the availability of joint credit life policies. The trial court did not recognize liability in this regard.

Joint credit life policies are available in this state and are sold to two individuals who are obligated on the same contract. Appellants sold two separate insurance policies to the primary debtor and the co-signer at a cost of 1½ times that of the joint policy. RCW 48.34.050 and .070[20] do not specifically prohibit the sale of individual policies to two obligors on the same contract. However, the mere fact that appellants did not advise consumers of the availability of the joint policy constitutes a deceptive practice under RCW 19.86.020. Also, this conduct violates RCW 48.-01.030, which states:

> The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception,

[20]"The initial amount of credit life insurance under an individual policy shall not exceed the total amount repayable under the contract of indebtedness. Where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater." RCW 48.34.050.

"The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of such periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments." RCW 48.34.070.

> and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance.

We, therefore, affirm the trial court judgment regarding appellants' appeal and reverse and remand the trial court's judgment regarding respondent's cross-appeal.

We concur;

/s/ Illegible
/s/ Illegible
/s/ Hamilton, J.
/s/ Illegible
/s/ Brachtenbach, J.
/s/ Horowitz, J.

Nos. 43644 & 43745

STAFFORD, C.J. (Concurring)—I agree with the majority opinion reached on the merits. Nevertheless, I am convinced that the expenditure of appellate resources was an unnecessary waste of judicial time. The consolidated appeal should have been dismissed pursuant to ROA I-51.

An appellate court has the inherent power to dismiss an appeal when a party disobeys the orders of a trial court. *Arnold v. National Union of Marine Cooks & Stewards Ass'n*, 42 Wn.2d 648, 257 P.2d 629 (1953), *aff'd*, 348 U.S. 37, 99 L. Ed 46, 75 S. Ct. 92 (1954); *Pike v. Pike*, 24 Wn.2d 735, 740-43, 167 P.2d 401 (1946). Whether considered singularly or collectively, this consolidated appeal and the

contempt action filed in today's accompanying opinion, *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, ... Wn.2d ...., ... P.2d .... (1976), represent the most flagrant disregard and contemptuous disobedience of a trial court's orders that I have witnessed. The actions which caused us to dismiss the appeal in *Arnold* are pale by comparison.

Appellants have paid no part of the civil penalties or attorneys' fees assessed against them by the trial court. They have wilfully refused to comply with orders pertaining to ancillary proceedings, restitution and the establishment of a trust account to protect citizens of this state who were victims of appellants' unfair and deceptive acts and practices.

Appellants have made no attempt to explain their failure to comply with the court's orders. They have secreted and manipulated assets to keep them out of the jurisdiction of the courts of this state. Further, they have flaunted the directions of the trial court by refusing to participate in ordered discovery proceedings and to produce documents needed to discover assets. In contrast, the trial court has given appellants additional time to comply with its orders and to purge themselves of contempt. Appellants' response to these periods of grace has been only contemptuous refusal to comply.

At no time have the appellants attempted to supersede the trial court's orders, as authorized by court rule. As a result, they are obliged to comply. *Ryan*

v. Plath, 18 Wn.2d 839, 855, 140 P.2d 968 (1943); *Sewell v. Sewell*, 28 Wn.2d 394, 396-7, 184 P.2d 76 (1947). Because appellants have wilfully delayed and refused to comply with the prior orders of the trial court, it is now time for us to punish them for their constant and flagrant disobedience by dismissing their appeal without considering the merits, as we did in *Arnold, supra*.

Dismissal is a strong sanction, but appellants' wilful and continuously contemptuous actions call for strong measures. I would have dismissed the matter without further waste of judicial time and effort.

/s/ Stafford, J.

/s/ I concur Wright, J.

APPENDIX B.

Opinion of Supreme Court of the State of Washington v. Ralph Williams, et al., 87 Wn.2d 327, ... P. 2d ..... (1976).

July 22, 1976.

[1] Contempt — Disobedience of Erroneous Order — In General. Sanctions for contempt may be imposed for the disobedience of any order within a trial court's authority, no matter how erroneous, so long as the court has jurisdiction over the subject matter and the parties.

[2] Contempt — Payment to Trust Fund — Enforcement. A court may use a contempt proceeding to enforce an order requiring the payment of money into a trust fund which has the purpose of insuring compliance with the court's judgment.

[3] Contempt — Filing of Appeal — Effect. A trial court's power to enforce its orders or judgment through the use of a contempt proceeding continues in force after the filing of an appeal from the orders or judgment unless they have been superseded.

[4] Contempt — Jurisdiction — Personal Service — Necessity. A contempt proceeding to enforce a judgment is a continuation of the main action and does not require personal service on the party in question. Personal jurisdiction over such party is established when he has actual notice of the contempt proceeding and of any related proceedings on which it is based.

[5] Consumer Protection — Unfair Competition — Restitution — Examination of Assets — Jurisdiction. A proceeding to examine the defendant in a consumer protection action for purposes of determining

his assets in connection with a restitution order is part of the consumer action itself and not a supplemental proceeding.

[6] Constitutional Law — Due Process — Notice. Notice given to a party affected by certain proceedings satisfies due process requirements when it is reasonably calculated to apprise him of the proceedings and affords him an opportunity to present his objections before a competent tribunal.

[7] Contempt — Power — Inherent Power — In General. In addition to its statutory contempt powers, a constitutional court has the inherent contempt power to punish misconduct committed in its presence, to enforce orders or judgments in aid of its jurisdiction, and to punish violations of its orders or judgments.

[8] Contempt — Power — Inherent Power — Statutory Fine Limitation — Effect. In exercising its inherent contempt power, a trial court is not limited to the fine limitation imposed by RCW 7.20.020 nor is it required to enter a finding that the fine permitted by statute is insufficient when the primary purpose of the contempt proceeding is not punishment but to coerce a party into compliance with the court's orders.

[9] Courts — Lawful Action — Presumption. Courts are presumed to act in a lawful manner.

Dolliver, J., did not participate in the disposition of this case.

Appeals from judgments of the Superior Court for King County, No. 729320, David W. Soukup, J., entered March 21 and April 7, 1975. *Affirmed.*

Contempt proceeding. The defendants appeal from a finding of contempt and from sanctions.

James C. Young, Ronald L. Hartman, and *Caidin, Kalman, Hartman & Sampson,* for appellants.

Slade Gorton, Attorney General, and *Barbara Rothstein, Thomas L. Boeder,* and *John R. Ellis, Assistants,* for respondent.

In the Supreme Court of the State of Washington.

State of Washington, Respondent, v. Ralph Williams' North West Chrysler Plymouth, Inc.; Ralph Williams, Inc.; Ralph Williams, as President of Ralph Williams' North West Chrysler Plymouth, Inc., as President of Ralph Williams', Inc., and individually, Appellants, Robert Friedman, both as Vice-President of Ralph Williams' North West Chrysler Plymouth, Inc., and individually, Defendant. No. 43730 En Banc.

Filed: July 22, 1976.

Appellants, Ralph Williams, Ralph Williams, Inc., and Ralph Williams' North West Chrysler Plymouth, Inc., appealed two superior court orders which found them in contempt of court and imposed sanctions for the contempt. On December 9, 1974, the trial court entered its judgment and order concerning restitution upheld in *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, ... Wn.2d ...., ... P.2d .... (197..), the main action. Appellants filed their appeal on the merits on December 27, 1974. Appellants did not supersede the trial court judgment and restitution order.

The restitution order gave appellants 15 days to place $142,000 in a trust account in a King County bank. Appellants did not establish the trust account within the 15-day time period. Respondent, the State

of Washington, filed a motion and affidavit for an order to show cause why appellants should not be held in contempt of court. Respondent also instituted proceedings to discover appellants' assets for the purpose of satisfying the restitution order in the main action. The court heard these motions on January 20, 1975, and appellants were represented by counsel at this hearing. The court ordered appellants to produce certain documents and to appear for an examination of their property. The court also ordered appellants to show cause why they should not be held in contempt of court.

The trial court set the hearing on the two orders for March 21, 1975. Respondent notified appellants' counsel of the hearing date. On March 21, 1975, in the presence of appellants' counsel, the trial court entered an order finding appellants in contempt for their failure to establish the trust account and to appear for the ancillary proceedings. The court gave appellants 15 days to purge the contempt. Appellants appealed the contempt order.

Appellants failed to purge themselves of the contempt. On April 7, 1975, the trial court entered an order imposing sanctions for the contempt. The order imposed "a continuing fine of $100 a day . . . on each defendant for each Order not complied with comprising a total fine of $200 per day per defendant until such time as defendants comply with the court's Orders." Appellants also appealed the order imposing sanctions. The two appeals were consolidated.

Initially, appellants challenge the power of the trial court to order appellants to establish the trust account. Appellants claim the trial court cannot base contempt

orders and sanctions on the failure to comply with the restitution order. In *Mead School Dist. 354 v. Mead Educ. Ass'n,* 85 Wn.2d 278, 280-82, 534 P.2d 561 (1975), we discussed the traditional test for determining when a party may disregard a judicial order.

> "[W]here the court has jurisdiction of the parties and of the subject matter of the suit and the legal authority to make the order, a party refusing to obey it, however erroneously made, is liable for contempt." *Dike v. Dike,* 75 Wn.2d 1, 8, 448 P.2d 490 (1968), quoting *Robertson v. Commonwealth,* 181 Va. 520, 536, 25 S.E.2d 352, 146 A.L.R. 966 (1943); *Deskins v. Waldt,* 81 Wn.2d 1, 5, 499 P.2d 206 (1972). . . .
>
> In most circumstances the application of this principle is relatively straightforward, and the distinction between errors of law and arrogations of power fairly easy to draw. Where it has not been courts have compounded it and fashioned the concept of "jurisdiction to determine jurisdiction." . . .
>
> . . .
>
> The "jurisdiction" test measures whether a court, in issuing an order or holding in contempt those who defy it, was performing the sort of function for which judicial power was vested in it. If, but only if, it was not, its process is not entitled to the respect due that of a lawful judicial body. "Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may [its order] be disobeyed and treated as though it were a letter to a newspaper."

(Some citations omitted.)

The court possessed the judicial power to enter the order concerning restitution. RCW 19.86.080 of the consumer protection act directs the court to "make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful." Appellants must give this judicial process respect, and the failure to do so constitutes a valid basis for holding them in contempt.

Also, in *State v. Ralph Williams' North West Chrysler Plymouth, Inc., supra,* we expressly approved the trial court's restitution order. The order is consistent with the legislative guidelines of RCW 19.86.080. It is designed to protect appellants' rights and carry out the required restitution of funds.

Appellants interpret the order concerning restitution as essentially an order to pay money. Appellants claim the trial court cannot find them in contempt for their failure to pay money. We disagree. The restitution order does not direct appellants to pay any money to respondent. The purposes of the order are to set up a trust account and to effectuate the return of consumer property in appellants' unlawful possession. The court may enforce, by contempt proceedings, an order for the payment of a specific fund. 17 C.J.S. *Contempt* § 13 (1963). Appellants do not suggest that they are unable to pay the funds into the trust account. They merely refuse to comply with the restitution order. A court may enter a contempt order for the refusal to comply with an appropriate judgment. *See Keller v. Keller,* 52 Wn.2d 84, 323 P.2d 231 (1958).

In *Arnold v. National Union of Marine Cooks & Stewards Ass'n*, 42 Wn.2d 648, 257 P.2d 629 (1953), plaintiffs recovered a $475,000 judgment against defendants. Plaintiffs instituted supplemental proceedings, and the trial court ordered defendants to pay $298,-000 of out-of-state funds into a receivership. The trial court entered the order to prohibit defendants from dissipating these assets. Defendants did not comply with this order, and the trial court found them in contempt of court. We affirmed the trial court's contempt judgment. *Arnold v. National Union of Marine Cooks & Stewards Ass'n, supra* at 654. Our decision in the *Arnold* case supports our position in this case.

The filing of the appeal on the merits did not deprive the trial court of subject-matter jurisdiction to enter the contempt and sanction orders. A trial court may not alter its orders or judgments once a party files an appeal. A court, however, may commence proceedings to enforce a judgment. In *Ryan v. Plath*, 18 Wn.2d 839, 855-56, 140 P.2d 968 (1943), we stated:

> The purpose of a supersedeas bond is to stay further proceedings in the superior court (Rem. Rev. Stat., § 1722 [P. C. § 7296]), and the failure to give such bond simply permits the enforcement of the judgment or decree by execution, attachment, garnishment, *contempt proceedings*, or some other appropriate form of process. Failure to supersede a judgment or decree, however, in no way affects the right of the appealing party to obtain review of the proceedings which led to such judgment or decree.

(Citations omitted. Italics ours.)

If appellants desired to stay the superior court proceedings, they could have filed a supersedeas bond. *See Arnold v. National Union of Marine Cooks & Stewards Ass'n, supra* at 649; CR 62(d); ROA I-23.

Appellants' next contention is also jurisdictional. They claim the superior court did not acquire personal jurisdiction over them, because they were not personally served with the show cause order. The court acquired personal jurisdiction over appellants for the trial on the merits. We consider the restitution proceedings in the instant case a continuation of the trial on the merits. The trial court must maintain continuing jurisdiction for the purpose of carrying out the legislative intent of RCW 19.86.080. This provision directs the court to restore property to all aggrieved consumers. Appellants, however, must receive actual notice of the restitution proceedings and any related contempt proceedings. In *In re Koome*, 82 Wn.2d 816, 821, 514 P.2d 520 (1973), we held:

> [I]n the context of contempt proceedings relating to alleged disobedience or defiance of a lawful judgment, decree, order, or process of a court by one directly bound thereby or in privity thereto, that it is unnecessary that the one charged be personally served with a copy of the order. It is sufficient if the alleged contemnor has knowledge of the order and its legal effect.

(Citation omitted.)

An examination of the record establishes the actual knowledge requirement. Appellants' counsel filed a brief, appeared, and argued for a denial of the show cause motion. Appellants' counsel also appeared and opposed

the contempt and sanction orders on March 21 and April 7, 1975. These actions clearly indicate that appellants had actual knowledge of the orders relating to their contempt and were fully cognizant of the legal consequences of such orders.

The ancillary proceedings are also a continuation of the trial on the merits. In *Arnold v. National Union of Marine Cooks & Stewards Ass'n, supra at* 652-53, we examined the nature of a supplemental proceeding.

> In *Turner v. Holden,* 109 N. C. 182, 13 S. E. 731, the defendant entered a special appearance attempting to dismiss supplemental proceedings on the ground there had never been proper service of process. The supreme court of North Carolina rejected defendant's contention, distinguishing between the necessity for service of process and notice, as follows (p. 184):
>
> "The Court had jurisdiction of the defendant by virtue of the service of the summons, the original process, and his appearance in the action. The action was not ended for all purposes when the plaintiff obtained his judgment; it remained, and remains, current for all proper purposes in the enforcement of the judgment by the ordinary execution and other appropriate means, including proceedings supplementary to the execution. The latter are not separate from and independent of the action; they are incident to and part of it; they constitute and are no more than a means allowed by the statute in the action whereby to reach the property of the defendant and enforce satisfaction of the judgment. *Hence, they are not begun by original process, a summons . . .*

> "The Court has jurisdiction in cases like this of the party to the action, and it is deemed sufficient to give him notice in the way prescribed of any motion or proceeding in the action. It is the duty of parties to actions to be on the alert at all times, until the same shall be completely ended." (Italics ours.)
>
> We affirm the position consistently adhered to in this jurisdiction that supplemental proceedings are not a new and independent action but are merely a continuation of the original or main action and are auxiliary thereto.

(Citations omitted.)

Respondent personally served appellants' counsel with the ancillary proceeding order. The record clearly indicates appellants had actual notice of these proceedings. Appellants, however, point to RCW 6.32.130[1] (proceedings supplemental to execution) and contend that in the context of this case, that statute requires personal service in the instant ancillary proceedings. We do not agree. The proceedings, although characterized as supplemental proceedings, were not in fact such in the traditional sense. In normal supplemental proceedings the prevailing party only seeks to discover the

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[1] "An injunction order or an order requiring a person to attend and be examined made as prescribed in this chapter must be served,—

"(1) By delivering to the person to be served a certified copy of the original order and a copy of the affidavit on which it was made;

"(2) Service upon a corporation is sufficient if made upon an officer, to whom a copy of a summons must be delivered. Where an order is personally served upon a corporation, unless the officer to be served is specially designated in the order, the order may be served upon any person upon whom a summons can be served." RCW 6.32.130.

other party's property in order to satisfy a judgment. *Field v. Greiner,* 11 Wash. 8, 11, 39 P. 259 (1895). The proceedings in this case were conducted contemporaneously with and in aid of respondent's efforts to obtain compliance with the order of restitution authorized by RCW 19.86.080. RCW 19.86.080 permits the trial judge to "make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property." Such authority is broad enough to comprehend ascertainment of appellants' current assets and determine whether they are in possession of property sufficient to comply with the restitution order. The restitution order sets up an efficient procedure to effectuate the return of consumer property in appellants' unlawful possession. The order also affords appellants an opportunity to challenge each restitution award before a court-appointed master and ultimately before the trial judge. As such, the ancillary proceedings stand in pari materia with enforcement of the restitution order and, with actual knowledge thereof, continuing jurisdiction over appellants arising from the case in chief remains.[2]

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[2]Two additional assignments of error concern the ancillary proceedings. Each of the assignments are unpersuasive.

Appellants cite King County Local Rule 12 (d)(1), which directs the motion judge to hear all supplemental proceedings. The motion judge did not conduct the ancillary proceedings. The observance of local rules are within the discretion of the court. It is normally not reversible error to decline to follow a particular rule. Furthermore, appellants did not prove they were prejudiced by having the trial court conduct a debtor examination instead of the motion judge.

Appellants also claim a violation of RCW 6.32.190, which provides:

> A judgment debtor who resides or does business in the state cannot be compelled to attend pursuant to an order made under the provisions of this chapter at a place without the county where his residence or place of business is situated.

(This footnote is continued on next page)

Due process requires notice reasonably calculated to apprise a party of the pending proceedings affecting him and an opportunity to present his objections before a competent tribunal. *Watson v. Washington Preferred Life Ins. Co.,* 81 Wn.2d 403, 408, 502 P.2d 1016 (1972). These proceedings did not violate appellants' due process rights.

There are three types of contempt proceedings in this jurisdiction: (1) the criminal contempt prosecution under RCW 9.23.010,[3] (2) the civil contempt initiated under RCW 7.20, and (3) the inherent contempt power of a constitutional court (a) to punish conduct occurring in the court's presence, (b) to enforce orders or judgments in aid of the court's jurisdiction, and (c) to punish violations of orders or judgments. *Keller v. Keller,* 52 Wn.2d 84, 86, 323 P.2d 231 (1958). RCW 9.23.010 does not apply to the present case. The contempt orders in this case are civil contempts. The trial court failed to state whether it was acting under the civil contempt statute, RCW 7.20, or its inherent power. RCW 7.20.020 states:

> Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six

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Appellants were present and doing business at the time they were personally served for the trial on the merits. Therefore, appellants were present within King County for purposes of the ancillary proceedings.

[3]"Every person who shall commit a contempt of court of any one of the following kinds shall be guilty of a misdemeanor:

". . .

"(4) Wilful disobedience to the lawful process or mandate of a court; or,

"(5) Resistance, wilfully offered, to its lawful process or mandate; . . ." RCW 9.23.010.

> months; and when the contempt is not of those mentioned in RCW 7.20.010(1) and (2), it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby, before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars.

In *Mead School Dist. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 278, 287, 534 P.2d 561 (1975), we discussed the relationship between general statutory contempt power and inherent contempt power:

> The court has inherent power to punish for contempt and the legislature may not destroy this power. . . . The legislature, however, may regulate that power as long as it does not diminish it so as to render it ineffectual. . . .
>
> The trial court did not find, and respondent does not argue, that the $100 limitation of RCW 7.20.020 would impair the court's contempt power in this case. In the absence of such a finding it was not necessary for the court to resort to its inherent, rather than statutory, contempt authority.

(Citations omitted.)

Appellants maintain the amount of fines are excessive, because the trial court did not specifically find that the minimum fines in RCW 7.20.020 impaired the court's contempt power. We disagree.

Courts utilize the statutory contempt power and the inherent contempt power for essentially two purposes—to punish individuals or to coerce individuals into complying with court orders. In the *Mead* case, the trial

court entered a punitive contempt order. The court enjoined a strike by certain school employees. The employees violated this order, and they were held in contempt. We stated:

> [T]he punishment imposed by the trial court was absolute: the contemnors were not penalized pending compliance, not sentenced conditionally under order to make plaintiff whole; they were simply sentenced. The trial court's desire was not to force adherence to its present order through duress, but to bolster respect for its future orders by attaching a deterrent sanction to violation.

Mead School Dist. 354 v. Mead Educ. Ass'n, supra at 286.

The *Mead* case is distinguishable from the present case. The fundamental purpose of the contempt order in this case is to coerce appellants into complying with the restitution order and the ancillary proceedings. When the primary purpose of the contempt is coercive and not punitive, the trial court need not find that the $300 maximum in RCW 7.20.020 impairs its contempt powers. The statutory maximum generally will not coerce compliance. In this case, appellants have completely disregarded the judgment and orders of the courts of this jurisdiction. If we limit the contempt fine to $300, the contempt will have no effect on appellants' future conduct.

A closer examination of the *Mead* case produces another distinction. Even though the trial court in *Mead* did not specifically state which contempt power it was acting under, we implied it was exercising its general statutory power.

> The proceedings below were, in all particulars except the severity of the sentences imposed, consistent with the requirements of RCW 7.20. In such circumstances, to allow trial courts to choose to deviate from the statutory scheme and revert to inherent power in a single aspect of a case would effectively nullify the statutes.

Mead School Dist. 354 v. Mead Educ. Ass'n, supra at 287-88.

In this case, the respondent and the trial court did not comply with RCW 7.20. Appellants' counsel alerted the trial court to the maximums contained in RCW 7.20.020. We presume courts act in a lawful manner. Thus, it appears the trial court was exercising its inherent power to enforce orders or judgments in aid of the court's jurisdiction. *Keller v. Keller, supra* at 89. The court's inherent power is not limited by the $300 minimum.[4]

Const. art. 1, § 14[5] prohibits the imposition of excessive fines. We consider the amount of fines reasonable in light of appellants' past activities. The trial on the merits established extensive deceptive sales practices. The trial court imposed severe penalties for these practices. *See State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, ... Wn.2d ....., ... P.2d ..... (197....). Appellants have completely disregarded the judgment on the merits, the order concerning restitution, and the proceedings incidental thereto. We find no violation of Const. art. 1, § 14.

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[4]Appellants also claim a violation of due process because the amount of fines exceeded the statutory limits of RCW 7.20.020. We find no merit in this contention. The amount of fines is within the court's inherent contempt power.

[5]"Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted." Const. art. 1, § 14.

Finally, the contempt orders do not violate Const. art. 1, § 17, which states: "There shall be no imprisonment for debt, except in cases of absconding debtors." No person was imprisoned for the failure to pay a judgment.

The judgment of the trial court is affirmed. The continuing fines, however, will be deemed suspended during the pendency of this appeal.

/s/ Hamilton, J.

We concur:

/s/ Stafford, J.
/s/ Rosellini, J.
/s/ Hunter, J.
/s/ Wright, J.
/s/ Utter, J.
/s/ Brachtenbach, J.
/s/ Horowitz, J.

APPENDIX C.

Judgment and Decree of King County, Washington Superior Court.

III.

JUDGMENT AND DECREE

In accordance with the Foregoing Findings of Fact and Conclusions of Law; final judgment having been entered as to defendant Robert Friedman in this action on 4 March 1974; and the Court having determined that there is no just reason for delay in entry of a final judgment as to all parties and issues in this action except those relating to procedures for, and final judgment of, restoration to all consumers who may have been harmed as a result of defendants' acts, unlawful practices and conduct, and the court having directed entry of a Judgment and Decree as contained herein to all other issues and parties; NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. The injunctive provisions of this Judgment and Decree which are applicable to the defendants shall apply also to their officers, agents, servants, representatives, and employees, and to all persons in active concert or participation with them who receive actual notice of said Judgment and Decree by personal service or otherwise. Defendants shall inform and advise all present and prospective officers, agents, servants, representatives, and employees, and all persons in active

concert or participation with them, of the terms of this Judgment and Decree and shall instruct them to comply therewith.

B. Defendants and each of them are hereby enjoined and restrained in the State of Washington from engaging in the following conduct:

1. Representing in any way, directly or by implication, in advertising or otherwise, that defendants customarily sell cars at discount, for low prices or at prices lower than competing dealers unless such is in fact the case.

2. Advertising specific cars at low prices with any express or implied representation that such prices are representative and illustrative of defendants' usual prices and range of prices when such is not the case.

3. Advertising cars which have body damage, extensive wear, excessive high mileage, or mechanical defects which are not disclosed or discernible in the advertising.

4. Disparaging in any way advertised cars in order to discourage purchase of the advertised cars by consumers;

5. Continuing to advertise cars after they have been sold.

6. Advertising any car when such ad does not in fact constitute a *bona fide* or sincere offer to sell the advertised car but rather is an alluring but insincere offer designed to attract consumers to defendants' dealership in order to switch consumers to the purchase

of non-advertised cars at prices and on terms more advantageous to defendants.

7. Representing, directly or by implication, in advertising or otherwise, that consumers can purchase cars on easier credit terms from defendants than from other dealers when such is not the case.

8. Advertising, or otherwise offering for sale, specific cars for low down and/or monthly payments with the express or implied representation that such credit terms are representative or illustrative of defendants' range of cars unless such is in fact the case.

9. Advertising directly or by implication that warranties are available on cars purchased from defendants unless said warranties are available to consumers in a meaningful manner in the regular course of defendants' business.

10. Advertising, directly or by implication that defendants substantially recondition used cars or that cars purchased from defendants will be serviced or repaired promptly or properly when such is not the case.

11. Failing to account to consumers in accordance with the provisions of ch. 62A.9 RCW, for profits made by defendants on the resale by defendants of repossessed vehicles.

12. Making any representations, directly or by implication, that have the capacity or tendency to mislead or deceive consumers as to the prices and/or terms for which cars may be purchased from defendants.

13. Charging amounts for dealer preparation of a vehicle which exceed the reasonable charges for preparation services actually performed.

14. Failing to make contracts available for inspection by consumers and/or to provide consumers with a meaningful opportunity to read and understand their contracts prior to completion of each sale.

15. Tape recording statements or conversations with customers or potential customers in a manner which does not fairly represent the actual transactions and the incidents leading up to the transactions.

16. Using tapes of any portion of a consumer transaction in such a way as to discourage legitimate consumer complaints.

17. Using relay salesmanship in a manner having the capacity or tendency to mislead or deceive consumers.

18. Failing to promptly return monies or properties received from consumers as trade-ins, deposits, or down payments to said consumers in the event of the failure of a negotiated transaction to be consummated; or failing to promptly return any such monies or properties upon request to consumers prior to the consummation of a transaction.

19. Taking or receiving a power of attorney or other document authorizing defendants or any of them to convey or to transfer the title of property of a consumer, prior to the consummation of a transaction with such consumer.

20. Making any representations, directly or by implication, having the capacity or tendency to convey the impression that credit insurance is required or a necessary part of a transaction with defendants when such is not the case.

21. Making any representations directly or by implication, concerning the credit terms on which a vehicle

can be purchased without disclosing all payments which must be made, to defendants or to any other person or firm in order to purchase the vehicle on such terms.

22. Using duress in any consumer transaction.

23. Charging unconscionable prices in consumer transactions.

24. Selling excessive or unnecessary credit life and disability insurance.

C. *Defendants shall restore to consumers all monies or property acquired by means of the acts herein prohibited or declared to be unlawful. The manner of such restoration shall be in accordance with such additional orders or judgments as the court deems necessary and issues pursuant to further proceedings, to accomplish said purpose.*

D. Nothing in this Judgment and Decree shall be construed to prevent any consumer from pursuing any other available remedies.

E. Pursuant to RCW 19.86.080, plaintiff State of Washington shall recover, and defendants shall pay the costs, including a reasonable attorney's fee, incurred by the plaintiff in pursuing this action in the amount of $389,258.20.

F. Pursuant to RCW 19.86.140, each defendant shall pay, and plaintiff shall recover, a civil penalty assessed as follows:

1. Against defendant Ralph Williams:

a. $2,000 for each violation of RCW 19.86.020 occurring on or after 14 May 1970 as set forth in Findings of Fact 27, 35, 42, and 48, or a total of *$256,000*.

b. $500 for each violation of RCW 19.86.020 occurring on or after 14 May 1970 as set forth in Finding of Fact 53, or a total of *$23,000*.

2. Against defendant Ralph Williams, Inc.:

a. $2,000 for each violation of RCW 19.86.020 occurring on or after 14 May 1970 as set forth in Findings of Fact 27, 35, 42, and 48, or a total of *$256,000*.

b. $500 for each violation of RCW 19.86.020 occurring on or after 14 May 1970 as set forth in Finding of Fact 53, or a total of *$23,000*.

3. Against defendant Ralph Williams' North West Chrysler Plymouth, Inc.:

a. $2,000 for each violation of RCW 19.86.020 occurring on or after 14 May 1970 as set forth in Findings of Fact 27, 35, 42, and 48, or a total of *$256,000*.

b. $500 for each violation of RCW 19.86.020 occurring on or after 14 May 1970 as set forth in Finding of Fact 53, or a total of *$23,000*.

G. Pursuant to RCW 19.86.140, defendants Ralph Williams, Inc. and Ralph Williams' North West Chrysler Plymouth, Inc., shall pay, and plaintiff shall recover an additional civil penalty assessed as follows:

1. Against defendant Ralph Williams, Inc., a penalty of $250 for each violation of RCW 19.86.020 occurring on or after 14 May 1970 as set forth in Findings of Fact 59, 63, 69, 73 and 76, or a total of *$10,250*.

2. Against defendant Ralph Williams' North West Chrysler Plymouth a penalty of $250 for each violation of RCW 19.86.020 occurring on or after 14 May

1970 as set forth in Findings of Fact 59, 63, 69, 73 and 76, or a total $10,250.

I. *Jurisdiction is retained* for the purpose of enabling either party to this Judgment and Decree to apply to the court at any time for the enforcement of compliance therewith, the punishment of violations thereof, *or modification or clarification thereof.*

J. This proceeding in all other respects is hereby dismissed and this Judgment and Decree is entered under the provisions of RCW 19.86.080.

DATED this 9th day of December, 1974.

/s/ David W. Soukup
Judge

Presented by:
/s/ Barbara J. Rothstein
BARBARA J. ROTHSTEIN
THOMAS L. BOEDER
Assistant Attorneys General
Attorneys for Plaintiff

APPENDIX D.

Order Concerning Restitution of King County, Washington Superior Court.

In the Superior Court of the State of Washington for King County.

State of Washington, Plaintiff, v. Ralph Williams' North West Chrysler Plymouth, Inc.; Ralph Williams, Inc.; Ralph Williams, as President of Ralph Williams' North West Chrysler Plymouth, Inc., as President of Ralph Williams, Inc., and individually, Defendants. No. 729 320.

ORDER CONCERNING
RESTITUTION

THIS MATTER having come on for hearing on the 9th day of December, 1974, pursuant to order of the Court following the Court's Oral Decision in this case delivered on 7 November 1974; and

The Court on the 9th day of December, 1974, having entered Findings of Fact, Conclusions of Law, Judgment and Decree (hereinafter Judgment) in this case; having considered the briefs and arguments of counsel and the evidence and records and files herein; and being fully advised in the premises; and

The Court having found that defendants Ralph Williams, Ralph Williams' North West Chrysler Plymouth, Inc., (hereinafter RWNWCP), and Ralph Williams, Inc., (hereinafter RWI), are responsible for violations of the Consumer Protection Act, RCW 19.86.020, as alleged in Causes of Action 1, 2, 4, 7 and 11 of Plaintiff's Amended Complaint herein; and that defendant RWNWCP and RWI are, in addition, responsible for violations of the Consumer Protection Act,

RCW 19.86.020, as alleged in Causes of Action 3, 5, 8, 9 and 10 of Plaintiff's Amended Complaint herein; and having entered Judgment in this case to that effect, and

The Court having further adjudged that defendants shall restore to consumers all monies or property acquired by means of the acts prohibited or declared to be unlawful by the Court; and that such restoration shall be in accordance with such additional orders or judgments as the Court deems necessary to accomplish that purpose;

Now, therefore, pursuant to RCW 19.86.080 and the equitable powers of the Court, it is hereby ordered as follows:

I. TRUST ACCOUNTS

A. Within 15 days of the date of this Order, defendants Ralph Williams, RWNWCP, and RWI shall establish a trust account in the amount of $140,000 to be applied toward accomplishing restoration to consumers of all monies or property acquired as a result of violations of RCW 19.86.020 as alleged in Causes of Action 1, 2, 4, 7, and 11 of Plaintiff's Amended Complaint herein, and as declared to be unlawful in the Court's Judgment herein.

B. Within 15 days of the date of this Order defendants RWNWCP and RWI, in addition to the trust account described in paragraph A above, shall establish a trust account in the amount of $2,000 to be applied toward accomplishing restoration to consumers of all monies or property acquired as a result of violations of RCW 19.86.020 as alleged in Causes of Action 3, 5, 8, 9 and 10 of Plaintiff's Amended Complaint herein, and as declared to be unlawful in the Court's

Judgment herein. The amount deposited in this additional account shall be used to accomplish restoration in those instances where consumers are entitled to additional restoration, pursuant to the measure of Restoration established in paragraph V below, over and above any amounts which may have been awarded as a result of violations of Causes of Action 1, 2, 4, 7 and 11 of Plaintiff's Amended Complaint.

C. Said trust accounts may be interest-bearing and shall be deposited in a bank located in King County, State of Washington, under such terms as shall be acceptable to the Court. Withdrawals from said account may be made only upon order of the Court. All interest paid on said accounts shall remain in the accounts to increase the principal amounts thereof.

D. Upon completion of the restoration to the Court's satisfaction, and pursuant to the Court's orders, any funds remaining in said accounts shall be applied as follows:

1. To satisfaction of any outstanding, unpaid judgments against the respective defendants and in favor of plaintiff in this action for costs, including a reasonable attorney's fee;

2. To satisfaction of any outstanding, unpaid judgments against defendants and in favor of plaintiff in this action for civil penalties, and

3. Any funds remaining in said accounts, after application to satisfaction of judgments as outlined in subparagraphs 1 and 2 above, may upon order of the Court be removed by the respective defendants and the trust account(s) dissolved.

II. NOTIFICATION TO POTENTIAL CONSUMER CLAIMANTS

A. No later than 30 days from the date of this Order, plaintiff shall disseminate a notice in substantially the form attached hereto as Exhibit A in order to obtain a proper estimate of what additional funds, if any, may be required to be deposited by defendants in the restoration trust accounts in order to assure prompt and adequate compliance with the restoration orders and judgments of the Court.

B. Said notice shall be disseminated as follows:

1. By first class mail to each consumer complainant reflected in the files of the Attorney General and the Department of Motor Vehicles whose potential claim has not previously been included in the calculations involved in establishing the amounts ordered to be placed in trust accounts as set forth in paragraph I above;

2. By circulation to the news media;

3. Upon request by any interested party.

III. SUPPLEMENTATION OF TRUST ACCOUNT

Upon receipt of the results of notification as described in paragraph II above, the Attorney General may petition this Court for deposit by defendants in the trust accounts established herein, of such additional sums as plaintiff deems appropriate and necessary to accomplish timely and complete restoration.

IV. RESTORATION PROCEDURES

A. No later than 45 days from completion of the establishment and supplementation of trust accounts in the amounts and under the terms provided in paragraphs I-III above, or at such other time as shall be ordered by the Court, plaintiff shall mail Consumer Claim Forms, in a form approved by the Court, to all potential, consumer restoration claimants whose addresses are known or become known to plaintiff.

B. Plaintiff shall take all other steps reasonably required to notify potential consumer claimants of the restoration procedures established by the Court, including press releases in a form approved by the Court, and to provide such persons with Consumer Claim Forms.

C. Potential consumer claimants shall be required to submit claim forms to the Attorney General, postmarked or delivered no later than 60 days from the date on which said forms are first mailed to consumers, which date shall be indicated on the first page of said forms.

D. No later than 90 days after the date of said mailing, the Attorney General shall provide counsel for defendants with a copy of the Consumer Claim Form for each consumer whose claim, in the opinion of the Attorney General, comes within the provisions of the Court's orders on restoration, along with the Attorney General's calculation of the amount due each such consumer as restoration pursuant to said orders. A copy of these materials shall also be filed in this action.

E. The Attorney General's Office shall screen all consumer restoration claims and organize such claims and supporting materials for orderly presentation to the Court and/or a Court Appointed Master.

F. Within 30 days of receipt of such materials from the Attorney General, the defendants may make

a written offer of settlement of such restoration claims to any claimant provided that a copy of such offer shall be provided to the Attorney General.

G. On or after 45 days from the receipt of such materials by counsel for defendants, any party herein may petition the Court for appointment of a Master to hear restoration claims which have not been settled in accordance with the Measure of Restoration established in paragraph V below, and for establishment of the procedures applicable to such hearings. The Master shall be chosen by agreement of the parties; and in the event of failure to agree prior to the hearing provided in this subparagraph, shall be selected by the Court with or without the recommendation of the parties.

H. Following completion of hearings by the Court-Appointed Master and submission to the Court of the Master's findings, the Court, upon petition of any party herein, will enter final judgment as to all restoration claims, including provision for appropriate distribution of funds in the trust accounts established for satisfaction of said claims.

V. MEASURE OF RESTORATION

A. The measure of restoration to be made by defendants [DWS] to each consumer claimant who establishes that he or she has been affected by the acts or practices alleged in the Causes of Action [DWS] herein held to be unlawful in violation of RCW 19.-86.020, shall be set by further court order without the taking of additional testimony regarding consumers who have previously testified and after appropriate hearings with regard to additional consumers. [DWS].

B. Each person who purchased a vehicle from defendants which was repossessed and which was sold by defendants subsequent to repossession shall be entitled to the amount of any profit made by defendants on such repossession sale as reflected by the business records of RWNWCP and as calculated consistently with those repossession profits reflected in Plaintiff's Exhibit 278 in this action (hereinafter referred to as "Repossession Profit").

C. Each person who establishes that he or she purchased credit insurance in connection with the purchase of a vehicle at RWNWCP based in whole or in part on the belief that such insurance was required or was a necessary part of the sales transaction, shall be entitled to restoration in the amount of all credit insurance premiums paid minus any benefits or rebates received or rebates applied to pay off a contract at the time of repossession (hereinafter referred to as Net Insurance Payment).

D. The Court and/or the Court Appointed Master may calculate the amount of restoration in other situations [DWS] to each consumer in such a manner as [DWS] shall be consistent with sound equitable principles.

VI. COSTS

A. The reasonable costs incurred by plaintiff in establishing and administering the restoration procedures ordered by the Court shall be paid by defendants. Such costs shall include, but not limited to, mailing costs, paraprofessional costs, and a reasonable attorney's fee.

B. The costs and fees of the Master, as established by the Court, shall be paid by defendants.

C. The costs outlined in subparagraphs A and B above shall be paid out of the trust accounts established for satisfaction of consumer restoration claims, prior to disbursement to consumer claimants.

D. In the event that the amount deposited by defendants in restoration trust accounts shall prove inadequate to satisfy all claims on said accounts, the amount remaining in the accounts after payment of costs as outlined in subparagraphs A and B above shall be distributed pro rata to all successful consumer claimants including those whose claims have been settled by defendants. Provided that defendants shall be liable for any restoration amounts in excess of amounts available in said trust accounts for distribution as provided by order of the Court.

VII. OTHER REMEDIES

Nothing in this order shall be construed to bar any consumer from pursuing any other available remedies.

DATED this 9th day of December, 1974.

/s/ David W. Soukup
JUDGE

Presented by:
/s/ Thomas L. Boeder
THOMAS L BOEDER
BARBARA J. ROTHSTEIN
Assistant Attorneys General
Attorneys for Plaintiff

APPENDIX E.

Order Finding Defendants in Contempt Issued by King County Superior Court.

In the Superior Court of the State of Washington in and for King County.

State of Washington, Plaintiff, vs. Ralph Williams Northwest Chrysler Plymouth, Inc., Defendants. No. 729320.

ORDER FINDING DEFENDANTS IN CONTEMPT

This matter having come on for hearing before the Honorable David W. Soukup on March 21, 1975, at 9:30 a.m., and defendants having appeared specially to contest the jurisdiction of the Court, and the Court having heard argument of counsel and reviewed the files and records herein and being fully apprised as to the premises herein;

IT IS NOW, THEREFORE, HEREBY ORDERED that:

Proper service having been made and defendants having notice of the hearing scheduled for this day on the Court's order to show cause why defendants should not be held in contempt for failure to comply with the Court's order concerning restitution; and

Proper service having been made and defendants having notice of the examination of Ralph Williams individually and as president of Ralph Williams Northwest Chrysler Plymouth, Inc. and Ralph Williams, Inc. scheduled for this day; and

The Court having personal jurisdiction over the defendants and defendants having failed to appear for

the above-scheduled hearings, defendants are hereby adjudged in contempt of court.

The defendants may appear before this court on April 7, 1975, at 9:30 a.m. and comply with the previous Court's order and thereby purge themselves of contempt or the Court will on April 7 impose appropriate sanctions based on the finding of contempt that is entered herein.

DONE IN OPEN COURT this 21st day of March, 1975.

/s/ David W. Soukup
DAVID W. SOUKUP, Judge

Presented by:
Attorney for Plaintiff
Notice of Presentation Waived:
Attorney for Defendant

APPENDIX F.

Order Imposing Sanctions for Contempt Issued by King County Superior Court.

In the Superior Court of the State of Washington for King County.

State of Washington, Plaintiff, v. Ralph Williams' North West Chrysler Plymouth, Inc., et al., Defendants. No. 729 320.

ORDER IMPOSING
SANCTIONS FOR CONTEMPT

This matter having come on for hearing this 7th day of April, 1975 before the Honorable David W. Soukup at 9:30 a.m., both parties having appeared by counsel, and the court having heard argument of counsel, reviewed the files and records herein and being fully apprised as to the premises herein;

IT IS NOW, THEREFORE, HEREBY ORDERED that:

Defendants having been adjudged in contempt of court on the 21st day of March, 1975 for failure to comply with the Court's Order Concerning Restitution and Order directing Ralph Williams individually and as President of the corporate defendants to appear for examination concerning assets, and defendants having been given till this day to purge themselves of said contempt, and defendants having failed to do so, a continuing fine of $100 a day is imposed on each defendant for each Order not complied with comprising a total fine of $200 per day per defendant until such time as defendants comply with the court's Orders.

It is further ordered that a hearing is scheduled for 9:00 a.m. on April 21, 1975 at which time the Court will determine whether or not a warrant [could &] should be issued for the arrest of the individual defendant Ralph Williams.

DONE in open court this 7th day of April, 1975.

/s/ David W. Soukup
David W. Soukup, Judge

Presented by:

/s/ .....
Barbara J. Rothstein
Assistant Attorney General
Attorneys for Plaintiff

APPENDIX G.

Notice of Appeal to Supreme Court of United States.

In the Superior Court of the State of Washington for King County.

State of Washington, Plaintiff, vs. Ralph Williams' North West Chrysler Plymouth, Inc., et al., Defendants. No. 729320.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

TO: Clerk of the above-entitled court, the State of Washington, and Slade Gorton, its attorney.

ALL DEFENDANTS in the above-entitled proceeding do hereby appeal to and seek review by the Supreme Court of the United States of America of each and every part of the following:

1. King County Cause No. 729320:

A. Each and every finding of fact and conclusion of law entered by the Superior Court for King County, David W. Soukup, Judge, on December 9, 1974, in Cause No. 729320 In Support of Judgment and Decree and Order Concerning Restitution.

B. Each and every part of that judgment and decree entered by the Superior Court for King County, David W. Soukup, Judge, on December 9, 1974, in Cause No. 729320.

C. Each and every part of that order concerning restitution entered by the Superior Court for King County, David W. Soukup, Judge, on December 9, 1974, in Cause No. 729320.

D. Each and any and all other orders so entered or contained in said cause.

E. Each and every part of that certain "Order Directing Payment of Terms" entered by the Superior Court for King County, David W. Soukup, Judge, on September 10, 1974, in Cause No. 729320.

F. Each and every part of that certain "Order Imposing Sanctions For Contempt" entered by the Superior Court for King County, David W. Soukup, Judge, on April 7, 1975, in Cause No. 729320.

G. Each and every part of that certain "Order Finding Defendants in Contempt" entered by the Superior Court for King County, David W. Soukup, Judge, on March 21, 1975, in Cause No. 729320.

H. Any and all matters, written orders or show causes related to or associated with that certain "Order Imposing Sanctions for Contempt" and that certain "Order Finding Defendants in Contempt";

2. Any and all decisions, and all matters relating thereto, of the Supreme Court of the State of Washington, Cause No. 43644, and Cause No. 43745 (combined), Remittitur filed and entered on October 4, 1976;

3. Any and all decisions and orders and all matters relating thereto, of the Supreme Court of the State of Washington, Cause No. 43730, Remittitur filed and entered on October 5, 1976;

4. And any and all other decisions, orders, or determinations by the Superior Court of the State of Washington in and for King County, related to, arising from, or in any way connected with any of the above decisions, orders or otherwise; including, but not limited to any other matter or item (such as issuance of bench warrants); occurring in the trial court subsequent

to the appeal from said trial court to the Supreme Court of the State of Washington, Cause Nos. 43644, 43745, and 43730, or any other matter occurring or taking place in the Superior Court of the State of Washington in and for King County subsequent to the decision and/or remand by the Supreme Court of the State of Washington, and/or any matter occurring after the entry and filing of the Remittiturs of October 4, 1976, and October 5, 1976.

DATED this 17th day of December, 1976.

Respectfully submitted,

by /s/ Ronald L. Hartman
RONALD L. HARTMAN, of attorneys
for Defendants, Ralph Williams'
North West Chrysler Plymouth,
Inc., Ralph Williams, Inc., or
Ralph Williams individually.

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464-7744
Attorney for the State of Washington